A TREATISE ON CONVICTIONS ON PENAL STATUTES.


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A

TREATISE

ON

CONVICTIONS

ON

PENAL STATUTES.

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TO

SIR FRANCIS BULLER, BART.

ONE OF THE JUSTICES OF HIS MAJESTY'S

COURT OF KING'S BENCH,

UNDER WHOSE TUITION,

WHATEVER ACCURACY OF INVESTIGATION,

OR PRECISION IN STATEMENT,

MAY APPEAR IN THE FOLLOWING WORK,

WAS ACQUIRED,

THIS ATTEMPT TO ARRANGE AND ILLUSTRATE,

THE DECISIONS OF THE COURT,

ON A BRANCH OF THE LAW VERY IMPORTANT

TO THE SUBJECTS OF THIS KINGDOM,

IS,

WITH GREAT RESPECT AND REGARD,

INSCRIBED,

BY HIS OBEDIENT AND FAITHFUL SERVANT,

THE COMPILER.


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INTRO-


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INTRODUCTION.

THE following Treatiſe, which was originally compiled for private uſe, is now offered to the Public with the view of facilitating to Juſtices of the Peace, and thoſe who are moſt frequently their adviſers, one of the moſt important and difficult parts of their duty. It cannot be expected to afford much information to gentlemen of the bar; to whom moſt of the caſes cited in it are already familiar. Even to them, however, it may not be wholly without its uſe; by furniſhing them with a book which may readily be conſulted on the circuit, or at ſeſſions, where ſubjects of this kind may frequently occur. But the

the principal object is, to enable those in whom so great a trust as the execution of penal statutes is reposed, to see in one clear point of view the mode and forms of proceeding that are required of them by the superior court. It is on this account that several of the leading cases are given more at large than would otherwise have appeared necessary: since the grounds and principles of a determination are often of more extensive utility than the determination itself.

From the present compilation the reader is not to expect in general more than what relates to the *form* of Convictions: for, though in many cases a reference to the form of his proceedings may greatly assist a Magistrate in ascertaining the principle on which they are founded, this was but a collateral object with the compiler; whose chief purpose is, to render every attentive and intelligent Justice of the Peace in a great measure independent on professional advice in the technical part of his duty. There is, however, a deviation from this plan in two or three instances; wherein a case, though applicable rather to the *merits* than the form of a Conviction, seemed to convey

vey information too important to be wholly omitted.

For the reſt: a diligent attention to the ſtatutes themſelves, as arranged and explained in the valuable compilation of Dr. Burn, may ſuffice. The ſubject of our preſent inquiry forms, perhaps, the only defective and unſatisfactory title in his work; and ſeems to have been ſlighted by him, for reaſons which, it is hoped, do not render the preſent publication ſuperfluous or uſeleſs. If Convictions ſhould hereafter be regularly returned to the quarter-ſeſſions, as it has been declared from high authority * that they ought to be, they would ſoon become leſs "tedious "and troubleſome" in drawing up; which practice will render more familiar to thoſe magiſtrates who ſhall be induced by the above opinion to attend to this part of their duty. Neither is it, perhaps, much to be wiſhed, not-

* Juſtices ought in all caſes to return Convictions to the ſeſſions, whether an appeal lies or not, that the Crown may not be deprived of its ſhare of the forfeitures: and when that is done, a return of a copy to a certiorari is good.—Per Buller J. in *R. v. Eaton*, 1 Term. Rep. 285.

with-

withſtanding the eaſe it might afford to magiſtrates, that ſummary forms of Conviction ſhould be univerſally eſtabliſhed: unleſs we deem it a greater advantage to the ſubject, that juſtices of the peace ſhould be relieved from a ſlight additional trouble, than that the moſt effectual reſtraint on the arbitrary tendency of ſummary juriſdictions ſhould be preſerved. The extenſion of ſuch juriſdictions to ſo many penal caſes, we cannot forget, has often been deprecated by the beſt writers on the laws and conſtitution, as an encroachment on the moſt valuable privilege of Britiſh ſubjects. But this objection would have much greater weight were they in all caſes relieved from the important duty of ſtating their proceedings on record. The preſent publication conſults the convenience of magiſtrates on a different principle. By arranging, combining, and illuſtrating the rules laid down at various periods by ſuperior authority, it endeavours to render them more certain in the application and eaſy in the obſervance, and to obviate all pretence for wholly diſpenſing with them.

Summary forms, indeed, have been eſtabliſhed of late years in ſeveral inſtances

ſtances where they were not allowed when the earlier caſes in this treatiſe aroſe; and particularly as to the offences of "profane ſwearing," "deer-"ſtealing," and "trading as a hawker "or pedlar without a licenſe:" though the caſes on theſe ſubjects, being neceſſary for the illuſtration of general principles, are of courſe inſerted. Yet, ſhould it pleaſe the legiſlature hereafter to eſtabliſh ſome general ſummary form to be applied to all Convictions (a meaſure which, if practicable at all, ought not ſurely to be adopted without the moſt ſerious deliberation) even in that caſe it would ſtill be neceſſary at leaſt to *deſcribe the offence* with preciſion and certainty. In that point of view many of the caſes collected and explained in this would continue to be important and uſeful.

In the mean time, the compiler flatters himſelf that it will ſupply a title, the defects of which muſt have been often obſerved in works of a ſimilar, but more extenſive nature; that it may be found to poſſeſs the only merit it claims, Utility, and obtain the only praiſe it ſeeks, that of method and accuracy.

It

It remains that ſomething ſhould be ſaid reſpecting the precedents ſubjoined to this treatiſe. They were moſtly collected whilſt the compiler was pupil to an eminent ſpecial pleader, now a learned judge in the Court of King's Bench, and a few from caſes determined in Court whilſt the compiler attended at the bar. They have, in general, the ſignatures of eminent counſel, or the ſanction of the Court upon argument. Yet it is not meant to offer them as infallible, but as uſeful auxiliaries to the treatiſe.

ON

ON THE

Form of Convictions

ON

PENAL STATUTES.

A CONVICTION (in the ſenſe in which it is here uſed) is, "A re-
"cord of the ſummary proceedings
"upon any penal ſtatute before one
"or more Juſtices of the Peace, or
"other perſons duly authorized, in
"a caſe where the offender has been
"convicted and ſentenced.

As the above mode of judicature has been introduced in derogation of the common law, and operates to the excluſion of trial by jury, the ſuperior courts of juſtice have rigidly confined its authority to the ſtrict letter of the reſpective ſtatutes by which it was eſtabliſhed;

bliſhed; and, in reviſing its proceedings, they require, that rules, ſimilar to thoſe adopted by the common law in criminal proſecutions and founded in natural juſtice, ſhould appear to have been obſerved; unleſs where the ſtatutes expreſsly diſpenſe with the form of ſtating them.

" Convictions," ſays Lord Mansfield (in " *R. v. Little*" [a]) ought to be taken " ſtrictly; and it is reaſonable they " ſhould be ſo, becauſe they muſt be " taken to be true againſt the defendant, and therefore ought to be con- " ſtrued with ſtrictneſs." A ſimilar doctrine was held in *R. v. Corden* [b], where, the reporter ſays, the court " thought that a tight hand ought to " be holden over theſe ſummary convictions, and it ought to appear to " them that the Juſtice has juriſdiction " in the caſe: they ought to be kept to " a proper degree of ſtrictneſs, and " not to be made arbitrarily and without authority."

[a] Burr. 613.

[b] Burr. 2181.

But though the Courts are *ſtrict* in forming their judgment upon convictions, they will not always be *aſtute* in finding objections to them.

Accord-

Accordingly, in *R. v. Chandler* [e], J. Holt ſays, "In theſe convictions by "Juſtices of Peace in a ſummary way, "where the ancient courſe of proceed- "ing by indictment and trial by jury "is diſpenſed with, the court may "more eaſily diſpenſe with forms, and "it is ſufficient for the Juſtices, in "the deſcription of the offence, to "purſue the words of the ſtatute; and "they are not confined to the legal "forms requiſite in indictments for of- "fences by the common law; for, "though all acts which ſubject men to "new and other trials than thoſe by "which they ought to be tried by the "common law, being contrary to the "rights and liberties of Engliſhmen as "they were ſettled by Magna Charta, "ought to be taken ſtrictly; yet, when "ſuch a ſtatute is made, one ought to "purſue the intent of the makers, and "expound it in ſo reaſonable a manner "as that it may be executed."

[e] Ld Raym. 581.

A ſimilar doctrine is ſaid to have been laid down by Mr. Juſtice Aſhurſt in *R. v. Thompſon* [d]; who obſerves: "As to the principle drawn from the "old caſes, that the court will be aſtute "in diſcovering defects in convictions "before

[d] Term. Rep. vol. ii. p. 18, &c.

" before ſummary juriſdictions; there
" ſeems to be no reaſon for it. Whe-
" ther it was expedient that thoſe ju-
" riſdictions ſhould have been erected,
" was a matter for the conſideration of
" the legiſlature: but, as long as they
" exiſt, we ought to go all reaſonable
" lengths in ſupport of their determi-
" nations. Therefore in whatever light
" they may have formerly been viewed,
" yet the country are now convinced
" that they derive conſiderable advan-
" tage from the exerciſe of the powers
" delegated to the Juſtices of Peace,
" and in modern times they have re-
" ceived every ſupport from the courts
" of law."

The beſt method, perhaps, of recon-ciling theſe different opinions (which in the abſtract appear ſcarcely conſiſtent with each other) is by an obſervation, which the caſes in general will be found to warrant; namely, that, as to thoſe parts of the record which are neceſſary to ſhew the juriſdiction of the Magiſ-trate and give him cognizance of the complaint, the courts are more ſtrict in their rule of conſtruction, and ex-pect more preciſion in the ſtatement, than as to the ſteps that follow when that eſſential point has been aſcertained.

They

They will not admit a ſummary and (if one may ſtill uſe the expreſſion) an unconſtitutional juriſdiction, unleſs the caſe in which it has been exerciſed, is *literally* the ſame as deſcribed by the ſtatute that gave it. But the Magiſtrate once appearing to be duly authorized, they will not *preſume* againſt the regularity and juſtice of his proceedings, if he has ſtated them with but a reaſonable degree of accuracy. Thus (as will be ſeen hereafter) the caſes are ſtrict as to the ſtile and title of the Magiſtrate convicting (which otherwiſe would appear a trifling object) and they require, in ſome reſpects, a fuller ſtatement of the offence in the information than in the evidence itſelf.

There are a few general rules, reſpecting a conviction, not properly reducible to any particular branch of it: as

Firſt, *It muſt be under the hand and ſeal of the Magiſtrate before whom it was taken.* This is implied in the idea of ſuch a record; and it could not otherwiſe even come before the court of K. B. for their determination.

Secondly,

Secondly, *A Conviction muſt be in the preſent tenſe.* But this doctrine, which ſeems to be laid down generally in the older caſes, ought, in reaſon, to extend only to the judgment; for though it ſeems reaſonable (in point of form at leaſt) that the Magiſtrate ſhould ſpeak in the preſent tenſe of his own determination; yet the preceding acts of his juriſdiction, ſome of which *muſt*, and others *may* have paſſed at a different time, are more properly ſtated in the paſt tenſe. The caſe of the *King v. Landen* [c], where a conviction of forcible entry was quaſhed, becauſe in the preterperfect tenſe *(acceſſimus et vidimus)* ſeems right; for this reaſon, namely, that the Magiſtrates were then ſtating their own acts at the time of conviction: but it may be doubted whether the objection in the *King v. Roberts* [f], that the witneſs *præſtitit ſacramentum*, inſtead of *præſtat*, would be deemed valid in any caſe where the evidence is ſtated to be given at one time, and the judgment (by regular adjournment) at another. In the *King v. Hall* [g] the firſt objection was, that the information is not in the *preſent* tenſe. But the court ſaid, the words objected to were better

[c] Stra. 443

[f] Ld. Raym. 1376. Stra. 608.

[g] Trin. 26 G. III. 1 Term. Rep. 320.

in

in the *paſt* than in the preſent tenſe, becauſe they referred to time paſt, namely, the time of making the information.

After all, this is admitted in the *King v. Roberts* to be only an objection to *form*, and would not now, perhaps, be attended to were the point again to come in queſtion.

Thirdly, It is alſo a general rule that *A conviction muſt be* certain, *and not taken upon collection.* Theſe are the words of Lord Ch. J. Holt in the *King v. Fuller* [h], where a conviction for having two concealed waſhbacks [i] was quaſhed, becauſe the information was upon the thirtieth of March, and the oath of the witneſs, on the third of April, was, that the defendant "*modo* "*habet et cuſtodit eadam duo privata* "*ſeu concelata vaſa*;" therefore the evidence is of a fact ſubſequent to the information, although it was alledged, in ſupport of the conviction, that the words of the oath, "quod modo habet "*eadam duo*, &c." prove that he had them at the time of the *information.* Thus alſo a conviction was quaſhed, becauſe it was for keeping a gun, "being "an engine for the deſtruction of the

[h] Ld. Raym. 509.
[i] Con. to 8 & 9. W. III. c. 19.

"gamet," without saying that the defendant *used it* for the destruction of the game [k].

[k] The *King v. Hunt*, cited in Dougl. 658 in margine.

Fourthly, *In a conviction the offence need not be laid to be* contra pacem, *as in an indictment.* Adjudged in *Chandler's* case above cited: for, in these "summary convictions," says Holt, "there is no need to pursue so strictly the forms of law." But perhaps a better reason is given in the same case [l] by Northey, the Attorney General, namely, that "this is not the *King's* "prosecution; he can have no fine; "but the prosecution of the party; and "this is the memorandum of what the "Justice had done in that matter."

[l] 1 Salk. 378.

Fifthly, It seems to be settled, that *a conviction cannot be good in part and bad in part, but must be wholly quashed, if there is any fault;* for though in one of the later cases (the *King v. Hall* [m]) a conviction is said to have been quashed as to part, and confirmed as to part, this was by the admission of the defendant's counsel, and not only the general practice is otherwise, but in one case (*R. v. Catheral* [n]) where a defendant was convicted for *not accounting* for money

[m] Cowper 728.

[n] Stra. 900.

money received as Collector of a turnpike, *and not paying over the money*; the latter being insufficiently expressed, the court would not let the commitment stand good as to the not accounting: for, they said, "it was one entire non-"feasance charged both in the convic-"tion and commitment, and they "would not sever them ‡."

‡ Vid. post.

Information.

A CONVITCION uſually conſiſts of ſix principal parts: Firſt, *The Information*;—Secondly, *The Summons*;—Thirdly, *The Appearance* or *Non-appearance of the Defendant*;—Fourthly, (in caſe he does not appear) his *Defence* or *Confeſſion*;—Fifthly, (unleſs he has confeſſed) *The Evidence*;—Sixthly, *The Judgment*.

I. The *information muſt always be ſtated at large*. This is repeatedly laid down in the caſes, and is neceſſary in order to give the Magiſtrate his juriſdiction. Where the ſtatute directs the information to be *on oath*, it ſhould be ſo ſtated in the conviction °.

° *Rex v. Robert Willis.* Hil. 19. G. III. MS.

Sometimes, where the offence is an invaſion of private property, a complaint from the *owner*, or at leaſt ſome proof of his diſſent, is deemed neceſſary, even though the ſtatute does not expreſsly require it; as in the caſe of the

the *King v. Corden*[p], a conviction on 5 G. III. c. 14. for the preſervation of fiſh-ponds and other waters, was quaſhed, becauſe (ſaid the Court) "there is "no complaint from the owner, nor "did it even appear to have been with-"out his conſent. It ought at leaſt to "appear that it was without his con-"ſent. This is plainly implied in the "act of parliament: the giving the "penalty to the owner ſhews it. Here "it does not ſufficiently appear that "this was private property, or who "was the owner. The witneſs who "gives the juſtice to underſtand that "Mr. H. was the owner, was not upon "oath, and therefore no witneſs."

[p] 4 Burr. 2279.

The INFORMATION ſhould contain:

Firſt, *the day when it was taken*; that it may appear to have been given within the time limited by the ſtatute.

Secondly, *The place where it was taken*, that it may appear the juſtice was acting within the limits of his juriſdiction.

And here it ſhould ſeem that the name of the county muſt be in the *body*

the conviction; and that a reference to the county in the margin is not ſufficient, as it would be in an order: for the courts are far ſtricter in caſes of convictions; and it has always been deemed neceſſary in an indictment.

Thirdly, *The name of the informer*; that, as moſt of the ſtatutes give a part of the penalty to him, it may appear afterwards that the witneſs is not the ſame perſon; it having been ſettled that the informer cannot be a witneſs where he is intitled to any part of the penalty †.

Fourthly, *The name and ſtile of the juſtice or juſtices to whom it is given*; that it may appear he or they have authority to take ſuch an information.

In the firſt caſe on this ſubject (*R. v. Dobbyn*[q]) an *order* of two juſtices was quaſhed, becauſe it did not appear they were juſtices *of* the county, or *for* the county, but only *reſiding in* the county; from which it may be inferred, that the ſame objection would be fatal to a *conviction*, in which greater ſtrictneſs is required.

[q] Salk. 474.

† Vid. poſt, title **Evidence.**

In

In a ſubſequent caſe, *R. v. Johnſon* [r], a conviction on 5 An. c. 14. for keeping a gun, not being qualified (after an objection to the ſummons, which was overruled †) was objected to, becauſe the ſtatute requires the conviction to be by juſtices of the county where the offence was committed, and that does not appear in this caſe. Et per Curiam, that muſt appear, elſe they have no juriſdiction. Et per Wearge, it does, for they diſtribute part of the penalty to the poor of the pariſh of *Chelfield, in com' Hant', infra quam paroch' offenſum præd' commiſſum fuit.* And the juſtices are juſtices for the county of Kent, and ſtile themſelves ſo. Adjournatur. It was quaſhed [s]; for per Curiam, "their juriſdiction muſt appear otherwiſe than out of their own "mouth." By this the Court ſeems to mean, that it is not ſufficient to ſet forth the authority of the juſtices in the adjudication (where they more properly ſpeak in their own perſons) but it muſt appear upon their ſtatement of the information, that being the ground of all the ſubſequent proceedings. This objection has been carried ſo far, that it has been made a queſtion whether a con-

[r] Stra. 261.

[s] Mich. 7 Geo.

† Vid. poſt, title **Appearance.**

viction

viction (of forcible entry) taken before juſtices *ad pacem in comitatu prædicto conſervandam aſſignatis*, without ſaying *pro comitatu*, ought not to be quaſhed. But the Court quaſhed it for another fault, viz. being in the preter-perfect tenſe. *R. v. Landen*[t].

[t] Stra. 443.

In *R. v. Chipp*[u] the third exception was, that the conviction ſet forth, that information was given to ſuch a one, *juſtice of peace*, but did not ſay *adtunc* a juſtice; and he might be a juſtice at preſent, and not at the time of the information. But the Court ſaid, that the conviction ſet forth, that information was made to ſuch a one, *exiſten' un' juſtic'*, &c. which muſt be intended that he was one at that time, and was ſufficient without ſaying *adtunc*.

Vid. ante p. 12.

[u] Stra. 711.

And with regard to the *diſtrict* for which the magiſtrate acts, it ſeems the Court will rather preſume the ſtatute to have meant more than it literally expreſſes, than give it ſuch a conſtruction as ſhall wholly defeat it. Therefore, it has been adjudged, that the authority given by ſtat. 43 Eliz. c. 7. (againſt unlawful breaking and cutting hedges, &c.) to convict before any juſtice, &c. *of any county, city, or town corporate*, where the offence ſhall be committed, is conſtructively given to any juſtice, &c.

&c. of any *place*, *diſtrict*, or *liberty* in any county where the offence ſhall be committed [v].

[v] E. 23 G. III. Cald. 302. R. v. Stephens.

Fifthly, *The name of the offender.*

Sixthly, *The time of committing the offence* ought to be ſtated, for the ſame reaſon that renders the time of taking the information material.

In the caſe of the *Queen v. Pullen & al* [a], which, though not law as to the two firſt points ſaid to have been determined, ſeems right as to this, it was held, that the time of the conviction, and alſo of the offence, ought to appear; the reaſon of which (the reporter adds) ſeems to be, becauſe it muſt be on a proſecution within ſix months after the offence committed. This doctrine is confirmed in Chandler's caſe, as ſtated in three different books.

[a] Salk. 369.

But a queſtion is made there, whether it be ſufficient to ſtate the offence to have been committed *between ſuch a day and ſuch a day*: for if the ſpace between the firſt day mentioned and the day of giving the information, be leſs than the time limited by the ſtatute for proſecuting the offence, the objection of uncertainty in that reſpect is

taken away. But another objection occurs, namely, that the defendant, if this method be purſued, muſt loſe the power he might otherwiſe have of proving an alibi; unleſs, indeed, the *evidence* confine it to a particular day.

The caſes, however, are expreſs, that the particular day need not be mentioned in the *information* (nor, as will be afterwards ſeen, in the *evidence*) provided it mentions the days between which the fact is charged to have been committed.

In the caſe of the *King v. Chandler* [b], the court held that "*inter ſuch and ſuch* "*a day he killed three deer*, is good; "for if a day certain were alledged, "the informer is not tied up to that. "Now in theſe caſes he is confined to "give evidence of a killing within theſe "days; ſo that it is more certain and "better for the defendant."

[b] As in Salk. 378.

Mr. Serj. Carthew, in his report of the ſame caſe, ſays, the conviction and another there mentioned, were affirmed, and adds, "the objection which ſeem-"ed to be of moſt weight, was the firſt "which was made in Chandler's caſe, "viz. that *the fact was not laid to be* "*done on any certain day*," &c. To which it was anſwered, "that all in-

"formations

" formations in the Exchequer were in " this form; and ſeveral precedents " were cited in this point." Lord Raymond [c] ſtates the ſame caſe thus: [c] P. 582. " As to the firſt exception, that it was " ſaid that the defendant, between the " firſt of July and the tenth of Sep- " tember, killed ten deer, without " ſhewing the particular days upon " which they were killed, and ſo ge- " neral and uncertain a deſcription of " an offence is very ſevere, becauſe it " drives the defendant to give an ac- " count of all his life, which he can- " not poſſibly be prepared to do, &c. " But to this exception the counſel of " the other ſide anſwered, that the " days were not material to be proved; " for evidence may be given of the " facts of any other days, and there- " fore the omiſſion of ſhewing them " will not vitiate; and all that is ne- " ceſſary to be laid in point of time is, " that the proſecution appear to have " been made within a year after the " fact committed; that the omiſſion of " the days is not any inconvenience to " the defendant, becauſe if he can ſhew " an authority for killing ſo many as " are charged upon him, in the ſame " time, it will drive the proſecutor to " prove more; and if he be charged " another time, he may aver, that thoſe

" for

" for the killing of which he has been " convicted, are the ſame." This recital of the counſel's argument is put into the mouth of the Court, and ſeems to be a perfect aſſent to them.

[d] 10 Mod. 248.

Alſo, in the *Queen v. Simpſon* [d], which was a conviction for deer-ſtealing, the firſt objection * was, that no certain time was laid for the commiſſion of the offence, but only that between ſuch a time and ſuch a time the defendant did ſteal *unum cervum.*

In anſwer to this exception, the caſe of the King v. Chandler was cited; and the Court ſaid it had been ſettled in that caſe, that *between ſuch a time and ſuch a time* was ſufficient.

Seventhly, *The place where the offence was committed* muſt be inſerted, that it may appear to be within the juriſdiction of the magiſtrate before whom the information is laid.

[e] Ld. Raym. 1220.

In the caſe of the *Queen v. Highmore* [e], the defendant was convicted before the Lord Mayor of London, upon

* This objection ſeems, though not expreſsly ſaid ſo, to apply to the information; which appears both by the term *laid*, and from the fourth objection; which is expreſsly applied to the evidence, and would otherwiſe be a mere repetition of this.

16 and 17 Car. II. c. 2. for ſelling coals contrary to 16 and 17 Car. II. c. 2. viz. leſs than 36 buſhels to the chaldron, &c. And the conviction being removed into the King's Bench by certiorari, it was quaſhed, becauſe there was no place mentioned where the coals were ſold; which ought to have been, in regard that the power of the Lord Mayor is only in caſe of coals expoſed to ſale in the city of London or liberties thereof. If the coals were expoſed to ſale in any other county, then the power of convicting is in the juſtices of the peace of that reſpective county. And therefore the Lord Mayor, to have intitled himſelf to a juriſdiction, ought to have ſhewn in the conviction that the coals were ſold within the city of London or the liberties thereof, and for want of that the conviction is naught.

Eighthly, The information muſt contain "*an exact deſcription of the offence*;" which, in order to give the juſtice a juriſdiction, muſt appear to be within both the letter and ſpirit of the ſtatute that creates it; and which muſt be exactly deſcribed for another reaſon, namely, that the defendant may know what charge he is to anſwer.

The beſt *general* rule for deſcribing the

the offence is, to purſue exactly the words of the ſtatute. But this rule admits of many modifications and exceptions. In ſome inſtances (as will afterwards appear) more than this has been deemed neceſſary, in order to exclude, upon record, the poſſibility of any legal exemption from the penalty.

The following caſes go to prove the rule, that "any leſs preciſe deſcription "than what is contained in the ſtatute "is inſufficient." The firſt was *Rex v. Llewellin*[f]. Conviction for a gun contrary to 33 H. VIII. "The con- "viction was for *having a gun* in his "houſe. The ſtatute is, *uſe to keep in* "*his or her houſe:* and perhaps it might "be lent him. The words of the ſta- "tute (ſaid the Court) ought to be "purſued. The conviction was there- "fore quaſhed." In the next, which was *Regina v. Moore*[g], a † conviction "againſt the defendant for killing deer "was removed into the Court of King's "Bench by certiorari, and was quaſh- "ed, becauſe it ſaid only that he killed "deer in *quodam loco* where they had

[f] Trin. 1 W. & M. 1 Show. 48.

[g] Trin. 1 An Lord Raym. 791.

† Note, the 16th G. III. c. 30. preſcribes a ſummary form of conviction in this caſe, and repeals all former ſtatutes on the ſubject.

"been

" been uſually kept, and did not ſay " incloſed." Alſo in the caſe of *Rex v. Mallinſon* [h], a conviction, intended to be on 22 and 23 Car. II. c. 25. ſ. 7. for " unlawfully taking and killing ten " fiſh, &c." was quaſhed, becauſe it did not ſay, conformably to the ſeventh ſection, that the defendant took the fiſh *without the conſent of the owner of the water*; but it only ſaid that the defendant, " not being a maker or ſeller " of any nets, &c. or other engines " for the taking of fiſh, nor being " owner of any river or fiſhery, nor " being a fiſherman lawfully authorized " to fiſh with nets in navigable rivers " or waters, nor an apprentice to any " ſuch fiſherman, *nor in any wiſe what-* " *ſoever empowered, authorized, or qua-* " *lified* by the laws of this realm, either " to take, kill, or deſtroy any ſort of " fiſh, &c. or other game whatſoever, " *either for himſelf or any other perſon* " or perſons whomſoever, nor to keep " or uſe any greyhound, ſetting dog, " hays, lurchers, tunnels, nets, or any " other engine to kill and deſtroy the " game, on 27th day of June, 31 G. I. " at G. aforeſaid, within, &c. did with " a certain net unlawfully kill and take " ten fiſh, that is to ſay, ten trouts, con-

[h] M. 32 G. II. 2 Burr. 679.

" trary

" trary to the form of the ſtatute, &c." Lord Mansfield there ſays, " The of-
" fence provided againſt by the act of
" 22 and 23 Car. 2. c. 25. is *ſtealing*
" fiſh; taking it *without the licenſe or*
" *conſent of the owner*. The juriſdic-
" tion given to the juſtice of peace
" is over every ſuch offender or
" offenders in ſtealing, taking, or kill-
" ing fiſh. Taking and killing in the
" intention of this ſtatute mean *ſteal-*
" *ing*. But this man is not convicted
" of *any* offence; for he is not charg-
" ed with *ſtealing*, nor even with tak-
" ing and killing the fiſh of *another*
" perſon, or *in another* perſon's pond.
" The offence ſpecified in the ſtatute is
" taking it " without the licenſe or
" conſent of the lord or owner of the
" water;" but it may be *his own* pond,
" and *his own* fiſh, for any thing that
" appears to the contrary in the preſent
" caſe." The other judges ſpoke to the ſame effect. The conviction was therefore quaſhed.

To this head (of preciſion in ſtating the offence according to the ſtatute) may be referred the caſe of the *King v. Trelawney*[1], where a conviction on 22 G. III. c. 47. for inſuring a ticket in the lottery authorized by 25 G. III. was

[1] E. 26 G. III. 1 Term. Rep. 222.

was quaſhed, becauſe the informer did not ſtate that the ticket on which the inſurance was made was a ticket *in the ſtate lottery*.

The general doctrine, that "a de-
"ſcription of the offence in the words
"of the ſtatute is ſufficient," is laid down by Lord Chief Juſtice Holt in Chandler's caſe (already cited); in which he ſays, "It is ſufficient for the
"juſtices, in the deſcription of the of-
"fence, to purſue the words of the
"ſtatute," &c. And he adds: "All
"that is neceſſary in theſe caſes of new
"offences made by new ſtatutes, and
"in new ſummary methods of con-
"viction by them, is to ſhew ſuch
"a fact as is within the ſtatute, and to
"deſcribe it as the ſtatute wills." And in the *King againſt Speed* [k], he ſays, "It
"is enough to lay the fact in the words
"of the act of parliament

[k] Ld. Raym. 583.

Alſo where a ſtatute expreſſes more offences than one in the disjunctive, though in the ſame ſentence, you may convict on either; as the reaſon of the thing, and the following determinations, clearly ſhew: In *Rex v. Filer* [l], the

[l] 1 Hill. 8 G. 1. Stra. 496.

the conviction was on 5 An. c. 14. for keeping a lurcher to deſtroy game, not being qualified. "Mr. Eyre excepted, "that it is not ſhewn he *made uſe* of "the dog to deſtroy game; and it may "be he only kept it for a gentleman "who was qualified, it being common "to put out dogs in that manner." *Sed per Curiam*, "The ſtatute 5 An. "c. 14. is in the disjunctive, *keep or* "*uſe*, ſo that the bare keeping a lurcher "is an offence. And ſo it was deter-"mined in the caſe of the *King v.* "*King*, Paſch. 3 Geo. B. R. which "was a conviction for keeping a gun; "and it was not doubted by the Court "whether "the keeping was not enough "to be ſhewn," the only queſtion they "made was, "whether a gun was ſuch "an engine as is within that ſtatute: "and in that caſe a difference was "taken as to keeping a dog, which "could only be to deſtroy the game, "and the keeping a gun, which a man "might do for the defence of his "houſe." The conviction was con-firmed †.

In

† It is obſervable, that although the point determined in this caſe has ſince been repeatedly held to be law, there ſeems to be an inaccuracy in the manner of ſtating the caſe therein cited; for if

In the caſe of *R. v. Chipp* [m], the defendant was convicted upon the ſtatute 4 & 5 W. & M. c. 23. for deſtroying game, not being a perſon duly qualified, Filmer, for defendant, took ſeveral exceptions to the conviction. 1. That the information, which was ſet forth in the conviction, was inſufficient to warrant the conviction; for the information only recited that he was an *inferior tradeſman*, but did not ſhew that he had *waſted his ſubſtance*, or that he was a *diſſolute perſon*, which are the words of the ſtatute; and therefore it did not appear by his conviction that the defendant was ſuch a perſon as was intended by the ſtatute; for he might be an inferior tradeſman, and yet have a ſufficient eſtate to qualify him to hunt, &c.

[m] Stra. 711. cited ante, 20.

But the Court overruled all the exceptions; and to the firſt they ſaid, that the ſtatute was in the disjunctive, viz.

if it be law (as has been determined in *R. v. Gardner*, 22 Stra. 1098. alſo in *Wingfield v. Stratford & al.* Wils. 315.) that a gun is not an inſtrument the *keeping alone* of which is penal, and that it differs from nets and dogs, which can only be kept for an ill purpoſe, then "*the keeping* is "not enough to be ſhewn." And indeed that is the expreſs adjudication in *R. v. Gardner*.

inferior

inferior tradeſman or *diſſolute perſon*; and therefore ſaying that the defendant was *either* was ſufficient ‡.

In ſome caſes, however, you muſt ſtate the offence and its circumſtances more fully than the ſtatute on which the conviction is founded deſcribes it.

Thus, what is ſtrongly and neceſſarily implied in a ſtatute, though not expreſſed in terms, ſhould be expreſſed in a conviction; as, in the above cited caſe of the *King v. Mallinſon*, the Court ſeemed to think, that as the *taking and killing* mentioned in the ſtatute meant *ſtealing*, *that*, or ſomething equivalent thereto, ſhould have been expreſſed.

‡ As to the ſecond exception, (which was, that it is not ſet forth that defendant did *unlawfully* hunt) the Court ſaid, that the ſtatutes forbid ſuch a perſon as the defendant to hunt at all, and made it criminal for ſuch perſon *to hunt* generally. And in this ſtatute there is no diſtinction betwixt *lawful* and *unlawful* hunting, as there is in the ſtatute againſt deer-ſtealers: and they agreed, that in a conviction for deer-ſtealing it muſt be ſet forth that the defendant did *unlawfully hunt*; but in the preſent caſe there need not, becauſe there is no ſuch diſtinction.

Alſo

Alſo the number and nature of things taken, deſtroyed, damaged, or embezzled (as the caſe may be) ſhould be expreſſed; more eſpecially wherever the ſtatute directs any recompence to be given to the party injured.

The *Queen v. Burnaby* [n] was a conviction upon the ſtatute 43 Eliz. 7. ſ. 1. againſt robbing of orchards, cutting of trees, &c. The conviction ſet forth, that whereas complaint hath been made to the juſtice of peace by Sir Robert Barnard, of Brampton, in the county of Huntingdon, that the defendant, in the night time, cut down divers lime trees of the ſaid Sir Robert Barnard, at Brampton aforeſaid, &c. the juſtice of peace awarded him to pay ſo much damages, &c. On removal by certiorari into the King's Bench, the ſecond objection was, that the conviction was uncertain, in not mentioning the number of trees; which ſhould have been done as a meaſure for the juſtice to give damages by.

[n] Ld. Raym. 900.

Holt Chief juſtice: "Playter's caſe, "in 5 Coke 34. is expreſs, that in "treſpaſſes the number and nature of "things ought to be mentioned; if "ſo in treſpaſſes, much more in a "conviction,

" conviction, where all imaginable cer-
" tainty is requiſite; the ſubject, by
" this private juriſdiction, executed
" by a ſingle juſtice in a ſummary
" way, being deprived of the privilege
" and benefit of the common law, and
" of being tried in the face of the
" country by the judgment of his peers.
" Beſides, the ſame reaſon that holds
" in treſpaſſes holds here, viz. the aſ-
" certaining the damage which by the
" ſtatute the juſtice is to aſſeſs; and
" this conviction may be pleaded in bar
" of an action of treſpaſs for the ſame
" treſpaſs."——The conviction was quaſhed †.

Somewhat ſimilar was the caſe of the *King v. Catherall* [p]; which ſtates, that the defendant was convicted on the Kenſignton turnpike act for refuſing to account and pay over the money by him received as collector; and being

[p] Stra. 90.

† In the above caſe it appeared, there was a claim of property on the defendant; and an attempt was made to put in a plea to the conviction, (on the authority of a caſe in Cro. Eliz. 821.) but the Court, by the opinion of three judges againſt Holt, rejected it; and ſaid the party muſt bring an action, though they admitted that the juſtices have no juriſdiction where property is in queſtion.

com-

committed, and a habeas corpus brought, the defendant was diſcharged, and the conviction quaſhed, becauſe no particular ſum was ſpecified, or the times when the money was charged to be received, ſo as to enable him to defend himſelf on a ſecond charge †.

Analagous to this was the rule which obtained as to convictions for curſing and ſwearing, before 19 G. II. c. 21. had preſcribed a ſummary form; viz. that the oaths or curſes ſhould be ſet forth; though it never was held neceſſary to ſet them out as often as defendant could be proved to have ſworn them ‡.

To the above head, of ſtating the offence more fully than it is deſcribed in the ſtatute on which the conviction is made, ſeems to belong the rule, "That "the qualifications and exemptions,

† Vid. ante. Vid. alſo *Rex v. Gibbs*, 8 Mod. 58. and Stra. 497. on an indictment for ſelling beer without paying the duty; where it was held, that ſaying he ſold *diverſas quantitates*,, without ſaying what quantities, was bad.

‡ Vid. *R. v. Chaveney*, Lord Raym. 1368. *R. v. Sparling*, 1 Stra. 497. *R. v. Popplewell*, *ibidem*, 686. alſo *R. v. Roberts*, Lord Raym. 1376.

"which

" which would have been a defence if " poſſeſſed, though contained in a dif- " ferent ſtatute, muſt be negatively ſet " out, if the ſtatute on which you con- " vict manifeſtly refers to it."

Thus, the ſtatute of 22 and 23 Car. II. c. 25. having allowed a number of exemptions from the general prohibition to keep or uſe guns, bows, greyhounds, &c. and the ſtatute of 5 An. c. 14. inflicting a penalty for keeping or uſing any greyhounds, &c. on any perſon *not qualified*, the Court have determined, that on a conviction under the 5 An. you muſt ſtate and negative all the qualifications mentioned in the 22 and 23 of Car. II.

In the earlieſt caſe, indeed, upon the ſtatute of 5 An. viz. *Regina v. Matthews* [q], the Court ſeem to have thought otherwiſe; for they ſay, " if it had " been laid generally thus, that he " not being a perſon qualified accord- " ing to law," it had been enough. But as the Court there give an opinion againſt the conviction, though upon another ground, viz. that it attempts to recite the qualifications and miſrecites them, and do not appear to have

[q] 10 Mod. 27.

to have come to any final judgment, this dictum has had no weight in the ſubſequent determinations, by which the contrary doctrine is now fully eſtabliſhed.

The *King v. Marriot*[m] ſeems to be the firſt caſe of this kind in the books, though two preceding determinations of the Court are there cited. In that caſe, as ſtated, it appears as if the objection was made to the information; and yet the Court is ſaid to have quaſhed the conviction, "becauſe the *witneſſes* had "taken upon themſelves to judge of "the qualifications."

[m] Stra. 66.

The next caſe is the *King v. John Hill*[n], which ſtates, that "the defendant "was convicted by Sir Henry Bate-"man, a juſtice of the peace of Mid-"dleſex, for unlawfully keeping a lur-"cher and a gun to kill and deſtroy "the game, *non exiſtens qualificatus per "leges hujus regni ad hoc faciendum con-"tra formam ſtatuti in hujuſmodi caſu "editi et proviſi.* And this conviction "being removed into the King's Bench "by certiorari, was quaſhed, Saturday, "February 12th, 1725, becauſe it was "only averred generally that he was "qualified, and did not aver that the

[n] Lord Raym. 1415.

" defendant had not the particular qua-
" lifications mentioned in the ſtatute,
" as to degree, eſtate, &c.

Here it does not appear whether the objection was made to the information or evidence. In the *King v. Maurice Jarvis* [o], it ſeems to have been deemed an objection to both. This was a conviction upon 5 An. c. 14. It was for keeping and uſing one ſetting dog and ſetting net for the deſtruction of the game. The information ſtated, that defendant, at the time and place when, &c. *was not qualified by any laws or ſtatutes of this realm* to kill game, or to *keep or uſe* any nets, or dogs, or other engines, for the deſtruction of game, &c. The evidence, after fully proving the fact, was exactly in the ſame words as to the qualification. The adjudication ſays, " It appears to us, the ſaid " juſtices, that the ſaid M. J. (the de-
" fendant) *was not then anywiſe quali-
" fied, empowered, licenſed, or authoriſ-
" ed, by or according to the laws of this
" realm*, to kill game; and that the
" ſaid M. J. is guilty of the premiſes
" aforeſaid charged on him in and by
" the ſaid information."

[o] 1 Burr. 148.

The firſt objection to this conviction was

was, that the juſtices have not ſhewn they had juriſdiction over this defendant; for they have not ſufficiently ſhewn his defects of qualification.

Lord Mansfield :—" It is now ſettled " by the uniform courſe of authorities, " that the qualifications muſt be all negatively ſet out, otherwiſe the juſtices have no juriſdiction over the " perſons killing game, or keeping dogs " or engines for the deſtruction of it. " The Obiter ſaying, in 10th Modern, " if it was a book of better authority " than it is, would ſignify nothing when " the *determinations* are the other way.

" There is a great difference between " the purvieu of an act of parliament, " and a proviſo in an act of parliament.

" In the caſe of *R. v. Marriott* [p], " where the witneſs ſwears only generally, it was holden inſufficient; and " the juſtices, who convict upon the " evidence of the witneſs, can have no " other or further ground to go upon " than what the witneſs ſwears.

[p] 1 Stra. 66.

" In the caſe of *R. v. Hill* [q], it is the " very point eſtabliſhed and ſettled, that " the general averment is not ſufficient, " and that it muſt be averred that the " defendant had not the particular qua-

[q] 2 Lord Raym. 1415.

" lifications mentioned in the ſtatute,
" as to degree, eſtate, &c.

" In the caſe of *Bluet qui tam v.*
[r] Comyns. " *Needs* [r] the *general* averment of de-
525. " fendant's not being qualified, was
" holden to be ſufficient upon an *action*,
" though inſufficient upon a *conviction*.

" The diſtinction is obvious between
" an action and a conviction. And
" there it was agreed (and it is given
" as the reaſon why it is not good up-
" on a conviction) that it muſt be made
" out before the juſtice, that the party
" had no ſuch qualifications as the law
" requires, before the juſtice can con-
" vict him; and the juſtice muſt re-
" turn, that he had no manner of qua-
" lification.

" Here the witneſs ſwears only gene-
" rally that the defendant was *not* qua-
" lified, &c. The juſtices adjudge it
" generally only. The ſtream can go
" no higher than the ſpring-head. So
" the concluſion which the juſtices
" drew from the teſtimony of the wit-
" neſs muſt be as general as that teſ-
" timony.

" In the caſe of *R. v. Pickles*, it was
" laid down as a rule, that the want of
" the particular qualifications required
" by 22 & 23 Car. II. c. 25. ought to
" be negatively ſet out in convictions,

" and

" and the only queſtion there was,
" whether it was neceſſary to add, 'nor
" lord of a manor.' *Exceptio probat re-*
" *gulam*; nor was the general rule at
" all doubted or diſputed in that caſe.

" In indictments upon 8 & 9 W. III.
" c. 26. for having a coining preſs,
" every thing which ſhews that the de-
" fendant had no authority, muſt be
" negatively ſet out. And ſo it was
" done in the indictment of Bell,
" which was lately argued before all
" the judges.

" I take the point to be fully ſettled
" by the conſtant tenor of all the au-
" thorities; and, I think, upon very
" good reaſon, if there was need to
" enter into the reaſon at large after it
" has been finally ſettled already."

M. J. Denniſon concurred, He ſaid,
" It was a clear caſe; and that it was
" fully ſettled and eſtabliſhed, that, in
" theſe convictions, the want of the
" particular qualifications mentioned in
" the act of 22 & 23 Car. II. ought to
" be negatively ſet out, if not, the juſ-
" tices have no juriſdiction to convict
" defendant as an offender: and the
" evidence and adjudication ought *both*
" *of them* to be, that he has not

" theſe qualifications, which are ſpeci-
" fied in that act, nor any of them.

" Indeed, you are not obliged to go
" further than the words of *this* act of
" parliament of 22 & 23 Car. II. and
" that was the caſe of *R. v. Pickles*.
" But, however, in that caſe the pre-
" ſent point was eſtabliſhed, and taken
" to be indiſputable.

" It is ſaid, that it is ſufficient to lay
" the offence in the words of the act of
" parliament. But that is not always
" ſufficient: it may be neceſſary to go
[s] p. 28 G. II. B. R. " further. *R. v. Chapman* [s], about rob-
" bing an orchard, was a caſe where
" the mere purſuing the words of the
" ſtatute was not ſufficient.

" But this point now before us is a
" ſettled caſe; and therefore there is
" no need to enter into argument about
" it."

Mr. J. Foſter concurred. " In ne-
" gative acts of parliament the point is
" fully ſettled and eſtabliſhed; that the
" particular qualifications mentioned in
" the purview of them muſt be nega-
" tively ſpecified in convictions made
" upon them."

By the court unanimouſly, the con-
viction was quaſhed.

I have

I have inſerted the arguments of the judges, (as ſtated by Sir James Burrow) in the above caſe, at large, on account of ſome obſervations, which (encouraged by what the Court have thrown out in a ſubſequent caſe) I ſhall venture to make on them.

It ſeems highly neceſſary, in order to ſettle the law reſpecting convictions with perfect preciſion, to ſtate accurately to which *branch* of them each caſe reſpectively applies. This in the older caſes is often omitted, and cannot always be gueſſed with ſufficient certainty, from the conviction at large, or a clear abſtract of it, not being given in the report. In the latter reports [t] we are not, in general, under the ſame difficulty; and in the ſtate of the preſent caſe, it appears clearly that the *information* ſtated only generally that the defendant was not qualified, without reciting the qualifications of the 22d and 23d of Car. II. As therefore the authority by which the juſtice takes cognizance of the offence muſt appear upon the *information*, (or in other words) as ſuch a complaint muſt be laid before him as warrants his proceedings upon it, the proper place for negativing all the qua-

[t] From Sir T. Burrow, downwards.

lifications, (any of which, it has been held, would take away the juriſdiction of the juſtice) ſeems to be the *information*. That it is neceſſary in the information *alone*, appears reaſonable, from the following conſiderations:

Firſt, It cannot be reaſonably required in the *evidence*; becauſe it is not the evidence, but the information, that *gives juriſdiction* to the juſtice; which juriſdiction cannot be again taken away, unleſs the defendant ſhall prove himſelf to be poſſeſſed of ſome of the qualifications ſpecified in the ſtatute, the onus of which proof ſeems to lie upon him, as it is impoſſible, in point of fact, for any witneſs to negative all the qualifications; he cannot, at moſt, go further than his belief; which, with full proof of the *fact* that conſtitutes the offence, muſt, in reaſon, be ſufficient to put the defendant upon proving his qualification, unleſs he thinks fit to deny the *facts*. It is not therefore, reaſonable to require that the juſtice ſhould ſtate upon his proceedings that which cannot, or ought not, to have, paſſed. This reaſoning is ſupported by an obſervation of the Court in a late caſe of

of *R. v. Crowther*[n], though they had not then an opportunity of expreſsly determining the point.

[n] H. 26 G. III. Term. Rep. 1 vol. 125.

Secondly, With regard alſo to the adjudication, or, as it is called in this treatiſe, the judgment, there ſeems to be no reaſon why all the qualifications ſhould be expreſsly negatived there any more than in the evidence. The adjudication is no more in ſubſtance than a declaration, that the facts alleged in the information are proved to the ſatisfaction of the juſtice; and when it ſays the defendant "is convicted of the ſaid of-"fence," it refers to the offence charged in the information, as no proof of any *other* offence could have been admitted on the hearing of that complaint. It muſt therefore be equally unneceſſary to repeat and negative all theſe qualifications, as it would be to repeat all the other facts alleged in the information, the general terms of the adjudication extending equally to all.

For the above reaſons it is preſumed, that, although the caſe of the *King v. Jarvis* has fully eſtabliſhed the rule of letting out the qualifications negatively

in the *information*, yet as what is there ſaid to have been thrown out relating to the *evidence* and *adjudication*, amounts to no more than an obiter dictum, a Court would now, in conformity to what is ſaid in *R. v. Crowther*, be inclined to confine the rule to the information alone.

It is, however, deemed ſo neceſſary in the *information*, that if the qualifications are omitted to be ſet out there, the evidence will not ſupply the defect.—This was held in the *King v. Wheatman* [v], in which caſe the qualifications were negatived in the evidence, but not in the information.

[v] Dougl. 331, 2.

The difference alluded to, between exemptions or qualifications in the *purview* (or enacting clauſes) of a ſtatute, and thoſe in a *proviſo*, is, that the latter need not be ſet out and negatived; as the following caſes ſeem clearly to prove: viz. the *King v. Ford* [w], which was a conviction on 3 Car. I. cap. 3. for keeping an alehouſe without licenſe. Forteſcue objected, that in the act there is a proviſo to exempt perſons who have been puniſhed by the former law of 5 and

[w] Trin. 9 Geo. I. Stra. 555.

and 6 Ed. VI. cap. 25. and therefore it ſhould have been ſaid, he had not been proceeded againſt upon that act.

Sed per Curiam, "That coming in "by way of proviſo, he ſhould have "inſiſted on it in his defence. It ap- "pears he was aſked what he had to "ſay, and therefore we may reaſonably "preſume he had no ſuch defence to "make." The conviction was confirmed. The next caſe on this point was the *King v. Bryan*[x]. Defendant was convicted on the Gin Act; and an exception was taken, that there was no averment, that it was not ſold "to be "uſed in medicine:" and the caſes on the Game Act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game.

[x] Mich. 12 Geo. II. Stra. 1101.

Per Curiam, "This is brought with- "in the general enacting clauſe; and "the true diſtinction is, where the ex- "tenuation comes in by way of provi- "ſo or exception." The conviction was confirmed. The ſame has been held where a *ſubſequent* ſtatute makes an exception to a former one; for it is incumbent on the defendant to ſhew, by

by way of defence, that he comes within such exception [y].

[y] Per Cur. in R. v. Hall. 1. Trin. 26 G. III. 1 Term. Rep. 320.

It is alſo now ſettled (notwithſtanding what is ſuppoſed to have been ſaid by the Court in *Reg. v. Matthews* above-mentioned) that in thoſe caſes where the informer need not negative *any* of the exceptions, and negatives *ſome* of them, *that* part of the information will be rejected as ſurpluſage, and the reſt holden good. This was one of the points in the caſe of *Rex v. Hall*, laſt cited, where the conviction was on 22 Car. II. c. 1. (for having an unlawful religious meeting in his houſe) and the information negatived, unneceſſarily, ſome of the exceptions in the ſtatute of 1 W. & M. c. 11. but not all of them. Yet the Court, on the above principle, affirmed the conviction.

Though ſo much exactneſs and preciſion is required in deſcribing the offence; yet where a conviction expreſſes a number of offences conſiſting of the ſame fact repeated, the words that charge the fact to be an offence need not be repeated as many times as the fact is alledged to have been committed. For inſtance, in *R. v. Speed* [z], exception

[z] Lord Raym. 538.

was

was taken to a conviction for deer-ſtealing, that the facts were laid at ſeveral diſtinct days, and then at the end comes *illicite occidit*; and ſo it did not extend to them all. But *per curiam*, "It is "one entire ſentence, and then *illicite* "*occidit* will extend to every one of "them as much as if it had been re-"peated particularly."

It ſhould alſo ſeem, that when a penal ſtatute varies the quantum of the penalty according to the circumſtances under which the offence was committed (unleſs where ſuch circumſtances are of the eſſence of the offence), you need not expreſsly ſtate under which of the circumſtances it happened; eſpecially if you go only for the leſſer penalty.—Thus, in a conviction on the Auction Act[a], for putting goods up and ſelling them by auction without taking out a licenſe, it was not expreſsly ſtated whether the offence was committed within or without the bills of mortality, tho' the act impoſes a greater penalty on perſons trading in that manner within the bills than without; but the offence was laid to be done "*at Reading, in* "*the county of Berks*;" which Lord Mansfield ſaid, ſufficiently appeared to be

[a] 17 G. III. c. 50. R. v. Vaſey.

be without the bills of mortality, tho' not expreſsly averred to be ſo *.

Another principle ſeems to be, that the party againſt whom the offence was committed (ſuppoſe an officer in the execution of his duty) need not be ſtated to have taken every ſtep required by the ſtatute to make his proceedings regular and legal; and that if thoſe proceedings are to be varied according to time, place, &c. it is not (on that account) neceſſary that the exact circumſtances of time, place, &c. ſhould be ſtated. Of this kind was the caſe of the *King* b Stra. 608. *v. Teed* [b], which was a conviction for obſtructing an exciſe officer in coming to weigh candles. And it was objected, that by 8 Ann. c. 9. the officer has power to enter by day or night, and if by night, then in the preſence of a conſtable; and here it is not ſaid whether it was by day or night: it might be by night without a conſtable, and then it was lawful for the defendant to obſtruct. *Sed per Curiam*, That ſhould have been ſhown by the defendant, and then he would not have been convicted.

It

* Vid. Precedents.

It is enough that this conviction does not appear to be wrong. We will presume the entry to have been in the day, else it would have been said *in nocte ejusdem diei.* The conviction was confirmed.

Of the Summons.

THE SUMMONS immediately follows the INFORMATION: and since it cannot, from the reason of the thing, be prior in order of time; so if the summons bear date on an earlier day than the information, it would vitiate the conviction.

In the case of *R. v. Kent*[a], "the defendant was convicted for keeping a "gun for destroying the game, not being qualified by law, &c. And the "conviction being removed into the "King's Bench by certiorari, was "quashed, because the information was "set out to be exhibited 2d Nov. 1 G. "II. and the witness was sworn, and "made his oath of the truth of the "facts contained in the information "the said 2d Nov. 1 G. II. but the summons of the defendant, his appearance and making defence, and the "conviction,

[a] 2 Ld. Raym. 1546.

" conviction, was laid to be the 2d of " October, 1 Geo. II. which was before " the information and examination of " the witneſs, &c."

It ſeems clear that the party ought, in point of fact, to be ſummoned. In the caſe of *Rex v. Venables*[b] (which was the caſe of an order, where the court is leſs ſtrict than in convictions) " the " Court were unanimouſly of opinion, " that the party in theſe caſes ought to " be ſummoned in fact; and if the juſ- " tices proceeded againſt a perſon with- " out ſummoning him, it would be a " miſdemeanor in them, for which an " information would lie againſt them."

[b] Ld. Raym. 1405. Stra. 630.

Alſo in *Reg. v. Dyer*[c] defendant was convicted on the ſtatute 7 Jac. I. c. 7. for buying embezzled yarn; and it ſet forth, " Whereas complaint had been " made unto A. and B. &c. And " whereas the defendant was ſummon- " ed to appear before them, and by " virtue thereof did appear, *on Tueſ-* " *day the 17th day of April*, 1702, " *&c.*" It was objected, that there was no ſuch day as Tueſday, the 17th day of April, 1702; and, indeed, the 17th

[c] Salk. 181

17th day was Friday; ſo that the time of the ſummons being impoſſible, it was the ſame thing as if there had been no ſummons, and a ſummons was neceſſary. *Et per Curiam*, "Upon the complaint the juſtice ought to make a "memorandum and iſſue a ſummons; "and if the party will not appear, or "cannot be found, he may proceed.— "In the principal caſe it is manifeſt "there could be no ſuch day, and "therefore he could not appear there-"upon; and when one day is ſet forth, "his appearance on another cannot "be intended." The conviction was quaſhed.

In all the ſubſequent caſes, it ſeems to be underſtood, not only that there muſt be a ſummons in point of fact, but that it muſt be ſhewn upon the conviction. But it has been made a queſtion, whether it be neceſſary that the ſummons ſhould be particularly ſet out; that is, whether the day and place ſhould be ſtated, or whether to ſay (in general terms) that the defendant *was duly ſummoned*, be ſufficient.

The firſt caſe as to this point ſeems to

to be *Regina v. Green*[d]. There the Court was moved to quaſh a conviction upon the ſtatute 8 An. againſt a baker for * ſelling bread. It was objected, that the conviction ſets forth, that being *debite ſummonitus*, and not appearing, they proceeded, &c. whereas natural juſtice requires that the defendant ſhould have had a reaſonable time allowed him for making his defence.

[d] 10 Mod. 213.

Parker Chief Juſtice:—"This is a ma-
"terial objection. Not ſaid that he
"was ſummoned to appear at a certain
"time, or any time, or when the
"ſummons was made."

Powys Junior:—"To be conſidered,
"whether, when it is ſaid that he was
"*debite ſummonitus*, the word *debite*
"does not import all reaſonable cir-
"cumſtances relating to that ſummons:
"and I am of opinion it does."

In the above caſe the conviction was quaſhed for another objection †. This point, therefore, was left undecided; and nothing

* This ſeems rather an extraordinary offence as ſtated; but the conviction muſt have been on the 8 An. c. 18. ſ. 3. for not obſerving the aſſize, or ſelling bread of leſs than the due weight. The above act is now repealed by 3 G. II. c. 29.

† Vid. poſt, title **Evidence.**

nothing can be collected from that part of the case, but that it was then considered as doubtful.

[e] Stra. 46.

In *R. v. Simpson*[e], an objection was made to the summons, that it does not particularize the place and hour: it is only, *licet summonitus fuit ad hoc tempus et hunc locum, sed default' fecit.* Answer, The default entered by the justices implies the summons was to appear at that time and place, for otherwise it would not be a default; and when the legislature has given a power, we will presume the justices pursue that power, unless the contrary appears. If they did not make a proper summons, they are punishable for it by information.

The last-mentioned case shews, that the day and place of the summons being shown by reference to the day and place on which the defendant made default is sufficient; and though there does not seem to be any decision since, that the words *duly summoned* would of themselves be sufficient; yet, considering the inclination shewn by the Court of late rather to support convictions than quash them, it is probable they would, on principle, deem it sufficient. However, it is safest to state the day and place.

If

If the ſummons be particularly ſtated, it ſhould appear to be for a reaſonable time and place: and it ſhould ſeem, by what was ſaid in *R. v. Mallinſon*[f], that a ſummons to appear *immediately on the receipt of that ſummons* would be deemed unreaſonable. This was Mr. Norton's firſt objection to that conviction; tho' he admits it was not neceſſary to have ſet it out at all; probably meaning, that *duly ſummoned* would have been ſufficient. The Court did not indeed expreſsly decide upon that objection, (having quaſhed the conviction for another fault); but Mr. Juſtice Wilmot ſays, "This conviction is bad for the faults "that have been mentioned, and for a "great many others; it had been "throughout;" which ſeems to imply, that he thought this objection had weight.

[f] Ante, 2 Burr. 679.

The defendant's appearance cures any defect in the ſummons, or even the total want of one*.

* Vid. poſt, title Appearance.

OF

OF THE

Appearance or Non-Appearance

OF

DEFENDANT.

IT muſt be ſtated, whether the defendant appeared, or not; for only in the caſe of his not appearing is the ſummons material; the following determinations having ſettled that appearance cures every defect of ſummons.

[a] Salk. 383. In the caſe of *Reg. v. Barret*[a] (which was a conviction for deer-ſtealing) the third objection was, that there is no due ſummons. Non allocatur, the defendant having appeared. In a mandamus it muſt appear that the party was ſummoned; becauſe he is to loſe his freehold, and it is a courſe of proceeding by the common law, wherein no appeal lies; otherwiſe in convictions, which are

are proceedings by ſtatute, in which the defendant appeared, and that appearance will aid the want of ſummons. So it was held in Peache's caſe; and all the precedents are ſo.

The caſe of *R. v. Johnſon*[b] was conviction on 5 An. for keeping a gun not being qualified; and exception was taken by Fazakerley, that there was not a reaſonable ſummons, for it was made on the 5th of October to appear the ſame day, which might be impoſſible, on account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning: then, it is to appear apud paroch' prædict', whereas there are two pariſhes mentioned before; ſo the man may have gone to one whilſt they were convicting him at the other. [b] Stra. 261.

Wearg contra. The defendant appeared at the time, and made defence; ſo that cures all defects in the ſummons. Et per Curiam, The anſwer is right.

R. v. Aikin[c]. The defendant had been convicted on the Hawkers and Pedlars Act. Sir Fletcher Norton objected to the conviction: for, 1ſt, He was not ſummoned to anſwer to the charge; [c] 3 Burr. 1785.

at

at leaſt it does not appear that he was ſummoned. The Court were unanimouſly of opinion, that theſe objections were not well founded; for firſt, He did appear, and denied the guilt; but did not deſire further time to produce his evidence, or to prove his innocence. He ſeems therefore to have waived any further defence. Conviction affirmed.

It was formerly made a queſtion, whether the juſtice, having ſummoned the defendant, might, if he did not appear, proceed to hear the evidence, and convict him, in caſes where the ſtatute does not expreſsly give ſuch a power; but ſince the caſe of *R. v. Simpſon*[d], it ſeems perfectly ſettled that he may.

[d] Stra 44.

In that caſe which was a conviction for deer-dealing*, it was objected, that as no appeal lies in this caſe, the juſtices ſhould not have proceeded in the abſence of the party, eſpecially where it may end in a corporal puniſhment, as it may do here, for want of a diſtreſs. Parker, Ch. J. delivered the reſolution of the Court. "We are all of opinion "the offender may be convicted without

* Vid. ſupra, title Summons.

" out appearing. The ſtatute is ſilent " as to the method of proceeding; and " the law of England, it is true, in " point of natural juſtice, always re- " quires the party charged with any " offence to be heard before he be con- " demned in judgment; but that rule " muſt have this exception, unleſs it is " by his own default; were it otherwiſe, " every criminal might avoid convic- " tion. The law being ſo, the magiſ- " trate is bound to give ſome opportu- " nity to the party to appear; and if, " upon ſuch a notice, he neither comes " nor ſends a ſufficient excuſe, the ma- " giſtrate may proceed to judgment. " If this was not to be allowed, the " conſequence would be, that the offen- " der would eſcape unpuniſhed, be- " cauſe he would never appear purpoſe- " ly to be convicted; and that would " be to make the execution of the law " depend on the will of the offender." He goes on more at large to prove that " proceedings againſt a man in his ab- " ſence are not againſt the common " law;" but the point being ſo thoroughly ſettled, it is needleſs to go further with the argument.

OF THE

Defence or Confeſſion.

IF the defendant appear, he ſhould be aſked what he has to ſay in his defence; and that defence (if he makes any) or his confeſſion (if he confeſſes) muſt be ſtated in the conviction.

This proceſs ſeems the moſt regular; becauſe if he confeſſes (which though not probable is poſſible) it is needleſs to hear, and conſequently to ſtate, the evidence againſt him; though the evidence may, and in ſome precedents is, ſtated firſt.

It has accordingly been determined, that the defendant's confeſſion, or "pleading guilty" cures the objection that the evidence was not given in his preſence, which otherwiſe has, in many caſes, been held fatal[a].

[a] R. v. Samuel Hall Trin. 26 G. III. Term. Rep. 320.

On the ſame principle, if the defendant confeſſes the charge, the juſtice may convict

convict without going into any evidence againſt him; and it has been determined he may do ſo, even where the ſtatute ſays nothing of confeſſion, but only directs him to convict by the oath of a witneſs or witneſſes.

In the caſe of *R. v. Gage*[b], the defendant was convicted on 5 Ann. c. 14. for uſing a greyhound in killing four hares*, per quod, he forfeited 20l. [b] Stra. 546.

Reeve excepted to the conviction, that the act of parliament had only given the juſtices juriſdiction to convict upon the oath of one or more credible witneſſes, whereas this was upon his own confeſſion, which, he inſiſted, the juſtices had no power to take; and it follows in the act, that the perſon *ſo* convicted ſhall forfeit, which word *ſo* is relative to the former method, by oath of one or more credible witneſſes.

Sed per Curiam (præter Eyre) "The "conviction muſt be confirmed. The "intent of mentioning the oath of one "witneſs was only to direct the juſtices

* Qu. Whether he ought to have been convicted in more than one penalty?—and vid. Cripps v. Durden, poſt, title Judgment.

" that they ſhould not convict on leſs " evidence. Suppoſe the confeſſion " had not been before the juſtices, but " before two witneſſes, who had ſworn " it; *that* would be convicting him on " the oaths of witneſſes, and yet the " evidence would not be ſo ſtrong as " this. By the civil law confeſſion is " eſteemed the higheſt evidence, and " in ſome caſes, though there are one " hundred witneſſes, the party is tortur- " ed to confeſs. Here the juſtices had " a better evidence than the evidence " of any ſingle witneſs, and it is a mon- " ſtrous thing to ſay, that a better ſort " of evidence ſhall not do."

But the confeſſion muſt be of ſuch facts as fully conſtitute an offence; otherwiſe it will not ſupply any defect of evidence.

[c] 1 Burr. 609.
[d] 8 & 9 W. III. c. 25. & 10 W. III. c. 27. & 3 & 4 An. c. 4.

The caſe of *R. v. Little*[c] was upon a conviction on the Hawkers and Pedlars Acts[d]. The information ſtated that defendant, *on ſuch a day, at ſuch a place,* " *was found offering to ſale ſilk handker-* " *chiefs, and trading as a hawker, ped-* " *lar, or petty chapman; and that the* " *ſaid T. L.* (the defendant) *did then* " *and there offer to ſell a parcel of ſilk* " *handkerchiefs.*" It then ſtated that the defendant did not, though required ſo

ſo to do, produce any licenſe, as the law in that caſe provided directs, to qualify him for his *ſaid trading*; that defendant being brought before the juſtice and being preſent, and having heard the information read, &c. is aſked, &c. "if he "hath any thing to ſay, or can ſay any "thing why he, the ſaid T. L. ſhould "not be convicted *of the ſaid offence ſo* "*charged upon him in form aforeſaid* ac-"cording to the form, &c. "Where-"upon he the ſaid T. L. doth now here "freely and voluntarily *confeſs* be-"fore me the ſaid juſtice, that he the "ſaid T. L. *did offer to ſell ſilk handker-*"*chiefs to the ſaid T. P. in ſuch man-*"*ner as is mentioned in the ſaid infor-*"*mation.*" It then ſtated, that he was required by the juſtice to produce a licenſe, &c. *to travel or trade*, purſuant to the ſtatute; that he did not produce any ſuch licenſe, or any licenſe, &c. and did not pretend or allege that he was the real worker or maſter of the goods, or the child, apprentice, agent, or ſervant of any ſuch worker, &c. nor allege any other matter in his defence.—The adjudication was, that ſaid T. L. *is a hawker* within the true intent, &c. that it manifeſtly appeared to the juſtice that the ſaid *T. L. is guilty of the offence in the ſaid information above laid to his charge in manner and form*, &c.: there-

fore that it is adjudged by him the ſaid juſtice, that the ſaid T. L. be, and he is convicted *of the ſaid premiſes, in the ſaid information ſpecified*, above laid to his charge, according to the form of the ſtatute, &c. and the ſaid T. L. forfeit the ſum of 12l. for *his ſaid offence*, to be levied and paid according to the form, &c.

Lord Mansfield.—" The act of 3 & 4 An. " refers to the deſcriptions in " thoſe of W. III. A ſingle act of ſel- " ling a parcel of ſilk handkerchiefs to " a particular perſon is not a proof that " he was ſuch a hawker, pedlar, or pet- " ty chapman, as ought to take out a " licenſe by theſe acts of parliament.— " Now it is certainly of the eſſence of " the crime of not producing a licenſe, " that he muſt be ſuch a perſon as " ought to take out a licenſe. And the " confeſſion is only of the fact that he " ſold the handkerchiefs to T. P. not " that he traded as a hawker, &c."

He then lays down the ſtrict princi- ple in deciding upon convictions [e], and adds, " I do not ſay that it is neceſſary " to define exactly what a hawker, ped- " lar, or petty chapman, *is*, but it is " neceſſary to alledge and ſhew that he " ſold the goods or traded *as one*."

[e] Vid. Ante.

The

The other judges concurred *.

Per Cur. unanimouſly. Conviction quaſhed.

If the defendant, when put on his defence, ſets up a claim of right to the thing he is accuſed of taking or deſtroying, and there is any pretence or colour for ſuch right, the juſtice ought to acquit him. This is laid down by Lord Ch. J. Holt. *R. v. Speed*[f]. By which it ſhould ſeem, that if ſuch a colourable right appeared upon the defence (as ſtated in the conviction) ſuch conviction would be quaſhed.

[f] Ld. Raym. 583.

If the defendant denies the fact charged upon him, or pleads not guilty, the next thing to be ſtated is

* Vide the Report.

The Evidence.

IT ſhould contain, as well as the information, the day and place where it was taken, the name of the offender, and the time when the offence was committed, ſubject to the qualification above ſtated, viz. that it may be ſufficient to fix it between ſuch and ſuch a day. For in the *Queen v. Simpſon* *, the fourth objection was, that though in the *information* the offence may be ſaid to be committed between ſuch a time and ſuch a time, yet the *proof* out to be certain.—Now the oath is no more than that the defendant did, within ſuch a time and ſuch a time, ſteal *unum cervum*; ſo that the time is left as uncertain in the evidence as in the information. And then *non conſtat*, the evidence relates to the ſame deer. It ſhould have been *cervum in information' prædict' mentionat.'* But to

* Quod vid. ante, tit. **Information.**

to this it was anſwered, in behalf of the conviction, that it was next to impoſſible for the witneſs to be able to ſwear to the very day, and not to be intended that there were more deer ſtolen than one.

Chief Juſtice Parker ſaid, there was nothing in the objection as to the evidence; and Eyre Juſtice ſaid, it had been ſettled in Chandler's caſe, that between ſuch a day and ſuch a day was well enough. The conviction was held good.

It muſt alſo contain, 1ſt, The name of the witneſs that he may appear to be a different perſon from the informer; as the ſtatutes generally give the latter a part of the penalty.

In the caſe of *R. v. Stone*[a], the defendant was convicted by a juſtice of peace of Dorſetſhire for killing a fallow deer of the king's in Cranbourne Chaſe; and the conviction was quaſhed, becauſe the informer was the witneſs, divers convictions having been quaſhed for the ſame reaſon before.

[a] Ld. Raym. 1545.

2dly, The evidence muſt be ſtated to have been given in the preſence of the

defendant, that it may appear he has had the benefit of a croſs examination.

b *R. v. Baker.* 2 Stra. 1240.

In the firſt caſe, indeed[b], it ſeems to have been determined, that ſtating the evidence to have been read to him was ſufficient. It was a conviction for keeping a lottery office contrary to a late ſtatute; and ſtated, that "Jones gave "information before two juſtices, and "Martindale, a credible witneſs, prov-"ed the fact; whereupon due ſummons "iſſued, and the defendant appeared, "and the ſaid evidence thereupon "given being now here *read unto and* "*fully underſtood by* the ſaid Francis "Baker, he is aſked what he has to "ſay."

"I (ſays Sir J. Strange) objected, that "it ſhould appear the evidence was "given *in the hearing* of the defend-"ent; whereas it was only read, where-"by the defendant loſes the benefit of "a croſs examination; but the Court "held it well enough, for all is a hiſto-"ry in the preſent tenſe, and ſuppoſed "to paſs at the ſame time; and if it "had been *heard*, it might be ſaid to "be only *hearing it read.* In theſe "caſes it is enough that it does not ap-"pear to be wrong; and it is laid to be "fully underſtood by him." (Then they quote

quote the caſe of Theed on the Candle Act.)—The conviction was confirmed.

Although the authority of the foregoing caſe ſeems not to have been denied in the ſubſequent determinations; yet, ſo far as the reporters ſtatement enables us to judge, the preſumption that the whole tranſaction paſſed at the ſame time ſeems unwarranted by the facts ſet forth; for the caſe ſtating the evidence immediately after the information, *then* the ſummons, *then* the defendant's appearance, and the *reading* of the evidence to him, ſeem to import the direct contrary. As for its being all in the preſent tenſe, that will be found the general language of convictions, whether the whole paſſes on the ſame day or not; and was by ſome ſuppoſed to be neceſſary, till the caſe of *R. v. Hall*[c] decided that it was not ſo in ſtating the information. It would ſurely, therefore, be better to ſuppoſe there is ſome inaccuracy in the ſtatement of the caſe of *R. v. Baker* (which ſeems to be a looſe one), than that the Court decided on a preſumption directly contrary to the facts.

[c] 1 Term. Rep. 320.

The next caſe on the ſubject ſeems to be *R. v. Vipont & al.*[d], in which the conviction

[d] 2 Burr. 1163.

conviction was in the following terms: "Borough of Derby, to wit.—Be it "remembered, that on, &c. at, &c. T.E. "of the ſaid borough, hoſier and wool-"comber, cometh before us J. B. Eſq. "mayor of the ſaid borough, and J. S. "gentleman, two of his majeſty's juſ-"tices of the peace of and for the ſaid "borough, and upon his oath *depoſed*, "that Joſeph Vipont, &c. (the other "defendants) journeymen woolcomb-"ers, who for ſome months next be-"fore their leaving his ſervice, as here-"after is mentioned, were employed by "the ſaid T. E. in the woolcombing "buſineſs, to work for him at reaſon-"able wages, had each for himſelf at the "ſaid borough confeſſed to him, 'that "they had in the month of November "laſt paſt, at the ſaid borough, agreed "one amongſt another, and with other "journeymen woolcombers, to raiſe "and advance their wages, and that "they would not work with him, or "any other maſter in the woolcomb-"ing buſineſs, unleſs he and they "would advance their wages;' and "that the ſaid T. E. thereupon refuſ-"ed ſo to do; and thereupon all his "ſaid journeymen refuſed to work for "him at their former reaſonable wages, "and had left his ſervice. Whereupon "the ſaid Joſeph Vipont, &c. *appearing*

"*before*

" *before us* to anſwer the ſaid charge,
" and *having heard the ſaid charge*; and
" *in the preſence of the ſaid T. E.* being
" called upon to ſhew cauſe why they
" ſhould not be convicted for unlaw-
" fully entering into ſuch combinati-
" ons as aforeſaid, contrary to the ſta-
" tute in that caſe made and provided;
" and having nothing to ſay, nor being
" able to make out any thing whereby
" to defend themſelves before us touch-
" ing and concerning the premiſes a-
" foreſaid; thereupon the ſaid Joſeph
" Vipont, &c. the day and year afore-
" ſaid, *by the oath of the ſaid Thomas*
" *Eaton*, a credible witneſs, *are* con-
" victed before us for unlawfully enter-
" ing into ſuch combinations as afore-
" ſaid, at the ſaid borough of Derby,
" to raiſe and advance their wages in
" the woolcombing buſineſs there, con-
" trary to the acts of parliament in that
" caſe made and provided. Given un-
" der our hands and ſeals, &c."

This (ſays the reporter) was a con-
viction on 12 G. I. c. 34. " to prevent
" unlawful combinations of workmen
" employed in the woollen manufac-
" tures, and for better payment of their
" wages."

Mr.

Mr. Serjeant Davy, on the behalf of defendants, objected to it,

1ſt, That no evidence is ſtated to have been given *in the preſence of the defendants*; only the charge was * read to them in the preſence of the proſecutor, Thomas Eaton, the witneſs; but it was not made out and proved by him *vivâ voce* before them, though they perſonally appeared, and conſequently had a right of croſs examining the witneſſes face to face; nor indeed is any evidence at all ſet out with ſufficient particularity and preciſeneſs.

Mr. Caldecot, *contra*, (as to the firſt point) cited the above caſe of *R. v. Baker*, and alleged that this conviction is as much in the preſent tenſe as that was.

Lord Mansfield ſaid, the firſt and the third objections † were fatal.

" 1ſt, The evidence ought to be " taken over again in a defendant's " preſence, unleſs he confeſſes. Now " here they do not confeſs before the *juſtices*;

* The conviction ſays *heard* by them; which might have been heard *given*.

† Vid. the third, poſt, title **Judgment**.

" *juſtices*; and the evidence only is, " that they had before confeſſed this " combination to the witneſs.' And in " the caſe of *R. v. Baker*, the Court " went upon the ſuppoſition that the " defendant was preſent when the evi- " dence was given, and did actually " hear it given.

" In a conviction the evidence muſt " be ſet out, that the Court may judge " of it; and it muſt be given in the " preſence of the defendant, that he " may have an opportunity of croſs " examining.

Mr. J. Denniſon. " 1ſt, The evi- " dence muſt be given in the preſence " of the defendant, that he may have " an opportunity to croſs examine.

" In the caſe of *R. v. Baker*, nothing " wrong appeared upon the face of the " conviction; and therefore the Court " ſuppoſed, and took it to have been " rightly tranſacted."

Mr. J. Wilmot. " 1ſt, The witneſſes " ought to be examined in the preſence " of the party accuſed, that he may " have the benefit of croſs examination. " And here it appears plainly enough, " that Eaton, the witneſs againſt theſe

" defend-

" defendants, was not ſo examined in " their preſence."

The above conviction was quaſhed upon the third objection alſo *, which was a clear and deciſive one. On this firſt objection Sir James Burrow remarks, that this caſe and that in Strange (notwithſtanding the explanation) ſeem very much alike. We may go further. In the caſe in Strange, ſo far as the conviction is there ſtated, the objection (on this head, ſeems much ſtronger than in the preſent. To any one that reads the ſtatement in Strange, it muſt, one ſhould imagine, ſeem ſcarcely poſſible that the evidence ſhould have been *originally* ſworn in the preſence of the defendant Baker, ſince he is not ſtated to have been ſummoned till after the evidence had been given; and admitting it might have been on the ſame day, yet it could hardly have been at the ſame time. It s alſo ſtated, that he heard it *read*; which, had it been *given* in his preſence, would not have been neceſſary. But in this caſe of *R. v. Vipont* (which, as well as the former, is in the preſent tenſe) there is no intervening ſummons, but the defendants are immediately ſtated to have appeared; and as no adjournment of the proceedings is ſtated, or

* Vid. poſt, tit. Judgment.

or any change in the dates appears, it ſeems as if all had paſſed on the ſame day; in which caſe, the court have ſince held, the evidence may be preſumed to have been given in the defendant's preſence. They are alſo ſtated to have *heard* the charge (which charge being upon oath, ſeems to have been conſidered as evidence as well as information); and it may be that they heard it *given*, not that they merely heard it read or repeated without an oath. In point of fact (ſo far as that conſideration can have weight), it ſeems not wholly improbable that a manufacturer and his journeymen ſhould go together to the juſtices to ſettle a diſpute reſpecting their wages (under an expreſs clauſe in the act) and that he ſhould then make his charge againſt them. Upon the whole, it ſhould ſeem, either that the *firſt* ground of the determination in *R. v. Vipont* was not fully conſidered, or the authority of the caſe in Strange is greatly ſhaken by it.

The next caſe on this ſubject is *R. v. Aikin*[f]; but there the conviction is not ſtated, nor any abſtract of it given. It is only ſaid, that the defendant had been convicted on the Hawkers and Pedlars Act. The ſecond objection is ſtated to be,

[f] 3 Burr. 1786.

be, that the witneſs was not examined in the preſence of the defendant; and therefore he did not hear the evidence, as far as appears upon this conviction. To this the court only ſay, "It may be "preſumed that the witneſs was exa- "mined in his preſence."

All we can conclude from this laſt caſe, as ſtated, is, that the general doctrine, admitted both in the caſes of *R. v. Baker* and *R. v. Vipont* (though they differed in the application), namely, "that the Court will preſume the wit- "neſs to have been examined in the "defendant's preſence unleſs the con- "trary appears," is recognized and "confirmed.

The next caſe in the books is *R. v. Kempſon*[g], where, in a conviction upon the game laws, the appearance of the defendant and the evidence were ſet forth as follows:—"Afterwards upon "the day and in the year aforeſaid, he "the ſaid Samuel Kempſon, having "been duly ſummoned, appeareth, and "is there *preſent* before me, in order "*to make his defence* againſt the ſaid "charge and information; and having "heard the ſame, is aſked by me the "ſaid juſtice if he can ſay any thing "for

[g] 2 Hil. 15. G. III. Cowp. 241.

" for himſelf why, &c. who pleadeth " that he is not guilty of the ſaid of- " fence. Nevertheleſs, *on the ſaid 14th* " *day of September*, one credible wit- " neſs, Richard Cratorn, now cometh " before me the ſaid juſtice, &c. and " upon his oath depoſeth and ſaith, " that on Wedneſday, the 14th day of " this inſtant September, he ſaw Sa- " muel Kempſon, &c. and thereupon " the ſaid Samuel Kempſon, before " me the ſaid Juſtice, by the oath of " one credible witneſs aforeſaid, accord- " ing to the form of the ſtatute afore- " ſaid in ſuch caſe made and provided, " is convicted of the ſaid offence, " &c."

Mr. Chambre objected, that it did " not appear upon the face of this con- " viction that the evidence was given " in the preſence of the defendant; " which it ought to be, that the party " accuſed may have an opportunity of " croſs examination.

Aſton Juſtice. " Enough appears " upon this conviction to ſhew that the " witneſs was examined in the pre- " ſence of the defendant. It muſt be " ſuppoſed that all that paſſed was at " one and the ſame time." *Per Cur.* Let the conviction be affirmed.

The

h Hil. 26 G. III. 1 Term Rep. 125.

The next caſe was *R. v. Crowther*.[h] It was a conviction on 5 Ann. c. 14. for uſing a gun. After ſtating the information, which negatived every one of the qualifications in the 22d and 23d Car. c. 25. it ſtated, that "on the "ſame day of at, &c. "in, &c. one credible witneſs, to wit, "E. T. came before me, &c. and by his "depoſition taken in writing before "me, &c. upon his oath on the ho-"ly goſpel, &c. ſwore, and upon his "oath aforeſaid affirmed, that the a-"foreſaid T. S. C. on the day of "aforeſaid, in, &c. did keep and "uſe a gun, and certain dogs called "ſetting dogs or pointers, to kill and "deſtroy the game, and hunted them "over certain grounds, part of "Farm in the pariſh aforeſaid, &c. "and did then and there (ſtating "the fact of ſhooting a partridge), con-"trary, &c. And afterwards, that is "to ſay, on the day of "in the year aforeſaid, he the ſaid "T. S. C. having been duly ſummon-"ed, appeareth before, &c. in order to "make his defence; and having heard "the ſame, and the aforeſaid depoſition "of the ſaid E. T. having been read "over again unto the ſaid E. T. in the "preſence and hearing of the ſaid T. S. C.

" T. S. C. *and the ſaid E. T. having* " *again affirmed his ſaid depoſition to be* " *true, in the preſence and hearing of* " *the ſaid T. S. C.* he the ſaid T. S. C. " is aſked by me if he can ſay, &c. " why, &c. Whereupon (plea of not " guilty) but he doth not produce to " me any evidence that he is in any " manner qualified, &c. to have, uſe, " or keep, &c. any gun, &c. to kill or " deſtroy the game of this kingdom. " Whereupon, &c. (it appearing to the " juſtice that he is guilty, he convicts " of ſaid offence, and adjudges him to " have forfeited 5l. &c.")

1ſt Objection, The evidence was not given in the preſence of the defendant. The witneſs only *affirmed* his depoſi- " tion to be true. *Per Curiam*, " The " firſt objection is good. The witneſs " ought to have been reſworn in the " defendant's preſence."

The laſt caſe on this point is *R. v. Thompſon*[1]. This was a conviction on 5 Ann. c. 14. (ſtating according to the precedent in 2 Burn, 308.) the information againſt the defendant, 2d December, 1786, the appearance of the defendant on the 9th, after being ſummoned, and the plea of not guilty; and then proceeding as follows: " Ne- " verthelefs,

[1] Trin. G. III. 2. Term. Rep. 18.

" vertheleſs, on the ſaid 9th day of " December, in the year aforeſaid, at " &c. one credible witneſs, to wit. R. T. " of, &c. cometh before me the ſaid " juſtice, and before me the ſame juſ- " tice, upon his oath on the holy goſ- " pel, to him then and there by me the " aforeſaid juſtice adminiſtered, depoſ- " eth, and upon his oath aforeſaid af- " firmeth and ſaith, that the defendant, " on the 7th day of December afore- " ſaid, in the year aforeſaid, at, &c. " (negativing the qualifications in 22 " & 23 Car. cap. 25.) did keep and " uſe a gun to kill and deſtroy the " game. And thereupon the ſaid (de- " fendant), the ſaid 9th day of Decem- " ber, in the year aforeſaid, at, &c. " before me the ſame juſtice, by the " oath of one credible witneſs aforeſaid, " according to the form of the ſtatute " aforeſaid, is convicted, and for his " offence aforeſaid hath forfeited the " ſum of five pounds, to be diſtributed " as the ſtatute aforeſaid doth direct, " &c."

After the caſe had been argued and decided on two other points (one that applied to the manner of ſtating the of- fence[k], and the other to the judg- ment[l]), the Court entertaining ſome doubt whether it ſufficiently appeared that

[k] Vid. poſt.

[l] poſt.

that the evidence was given in the defendant's preſence, deſired the matter might ſtand over. On the next day Aſhurſt, Juſtice, ſaid: "On looking into the caſes we find that this objection has before been made; and the Court have held, that in caſes circumſtanced like the preſent, they will intend, that as the whole proceedings are ſtated to have paſſed on the ſame day, the evidence was given in the preſence of the defendant."

Buller Juſtice. "It has been decided in ſeveral caſes, that there is no foundation for this objection. The firſt of them was *R. v. Aikin*[m]; where the conviction, as far as the evidence went, was preciſely ſimilar to the preſent. The Court ſaid, it may be *preſumed* that the witneſs was examined in the defendant's preſence. The next caſe was that of *R. v. Kempſon*. There the ſame objection was made; but the whole tranſaction appearing to have paſſed before the magiſtrate on the ſame day, Aſton J. ſaid: 'Enough appears upon this conviction to ſhew that the witneſs was examined in the preſence of the defendant. It muſt be ſuppoſed that all that paſſed was at one and the ſame time. Beſides, that the precedent in

[m] Burr. 1715.

"Burn

" Burn is in the ſame form." The conviction was affirmed.

It has been already obſerved*, that, even if it ſhall appear on the conviction that the evidence was not given in the defendant's preſence, yet if he confeſs the charge, that irregularity is cured [n].

[n] *R. v. Hall* 1 Term. Rep. 320.

A third rule with regard to the evidence is, that *it muſt be of a fact prior to or exiſting at the time of the information*, and not of a fact ſubſequent to it. On this point turned the caſe of *R. v. Fuller*[o]. J. S. came before the juſtices of peace, viz. two, according to the me- " thod directed by 12 Car. II. c. 23. ſ. 31. and gave them information that the defendant kept two concealed waſh-backs, contrary to 8 & 9 W. III. c. 19. This information was given the 30th of March, 1699. Upon which the two juſtices iſſued their ſummons to ſummon the defendant to appear before them the 3d of April following; at which day, upon his appearance, and oath being made by a credible witneſs, that the defendant *modo habet et cuſtodit eadem duo privata ſeu concelata vaſa, Anglice* waſh-backs, they adjudged that he ſhould forfeit 20l. for each waſhback. It was moved

[o] Ld Raym. 509.

* Vid. tit. **Confeſſion.**

ed to quaſh it, becauſe the information was given the 30th of March, and the oath of the witneſs upon the 3d of April, upon which the conviction is grounded, is, *quod modo habet*, &c. which muſt be underſtood of the time of the conviction, which is a different offence from that of which the information was given to the juſtices; becauſe, though he had concealed veſſels the 3d of April, it may be that he had not any the 30th of March, when the information was given; and therefore the evidence on which the conviction was made not being conformable to the information, there is here a conviction without an information. Serjeant Levinz. " 1. The words of the oath are, " ' quod modo habet *eadem* duo,' &c. which proves that he " had them at the time of the informa- " tion. 2. The juſtices may proceed " without complaint or information. 3. " If complaint be requiſite, they may " proceed upon it *inſtanter*."

Holt Chief Juſtice. " 1. The evi- " dence is of a fact ſubſequent to the " information; and though the *eadem* " may be evidence that he had them at " the time of the information, yet con- " victions ought to be certain, and not " taken upon collection. 2. There

" ought to be information or com-
" plaint. 3. Though a conviction made
" upon an information *inſtanter* may be
" good, yet it ought then to be declar-
" ed to be made ſo, and not be ground-
" ed, as here, upon an information
" which is not proved, the evidence be-
" ing of a fact ſubſequent to it; but if
" it had been of a precedent fact, it
" had been good."

A fourth rule in ſetting out the evidence is, that the *fact muſt be proved to have been committed in the place where it was laid*, or at leaſt in ſome place within the juriſdiction of the magiſtrate convicting. This is proved by *R. v. Jeffries* [p], which was a conviction on the Lottery Act [q], before two juſtices for the county of Middleſex. The information charged, " that on the 10th of March, 1786, " Thomas *Jeffries*, of Great Queen-" ſtreet, &c. did, in Great Queen-" ſtreet aforeſaid, in the pariſh of St. " Giles's in the Fields, take and re-" ceive from one Thomas Jackſon, the " ſum of 2s. and 9d. of lawful money, " &c. And in conſideration thereof " the ſaid Thomas Jeffries did promiſe " and agree to pay to the ſaid Thomas " Jackſon the ſum of one pound and " one ſhilling if a certain ticket No. " 18,433,

[p] E. 26 G. III. 1 Term. Rep. 241.
[q] 22 G. III. c. 47.

" 18,433, in the lottery authorized and
" eſtabliſhed, &c. ſhould be drawn,
" fortunate or unfortunate, on the 30th
" day of drawing the ſaid lottery, con-
" trary to the form of the ſtatute in
" ſuch caſes made and provided. By
" reaſon whereof, &c.

The evidence was as follows:—
" Thomas Jackſon depoſeth and ſaith,
" that on the 10th of March laſt he in-
" ſured perſonally with the ſaid Tho-
" mas Jeffries No. 18,433, and paid
" two ſhillings and ninepence to receive
" one guinea, if drawn blank or prize
" the 30th day of drawing, and receiv-
" ed the ticket now here produced;
" which ticket is in the words and fi-
" gures following;" (deſcribing it).

Erſkine objected, that the evidence did not prove the offence to be committed in the place laid in the information; which it ought to have done: for wherever the juriſdiction of the magiſtrates who try the offence is local, the offence muſt be proved to have been committed within their juriſdiction.

Of this opinion was the Court; therefore the conviction was quaſhed.

The fifth and laſt rule reſpecting the evidence is, that *it ſhall be ſet out at large, and* (as a neceſſary conſequence) *contain a full and accurate ſtatement of the facts that conſtitute the offence.*

The above rule branches out into ſeveral points:

Firſt, It is perfectly ſettled, notwithſtanding the caſe of the *Queen v. Pullen* and others[r], that it is not ſufficient merely to ſtate that the witneſs ſwore *de veritate præmiſſorum*, referring to the information. This a variety of caſes have determined, viz. the *Queen v. Green*[s], where the oath was *de veritate præmiſſorum*. The *King v. Baker*[t], where the evidence was, that the defendant is *guilty of the premiſes*, which was taking upon him to ſwear the law. The *King v. Theed*[v], where it was only alledged that the offence was fully and duly proved. The *King v. Lloyd*[x], where the Ch. Juſtice ſays, "It is fully ſettled that "in convictions the evidence muſt be "ſet out; and if this was to be conſi-"dered as a conviction, it would there-"fore be bad*."

[r] Salk. 369.
[s] 10 Mod. 213.
[t] Stra. 316.
[v] 2 Stra. 919.
[x] 2 Stra. 999.

The

* It was an order of the quarter ſeſſions againſt a clerk of the peace.

The above caſes were fully confirmed in the *King v. Killet*, clerk[y], which was a conviction of a clergyman before a juſtice of the peace, upon 19 G. II. c. 21. ſ. 13. for neglecting to read the act to prevent profane curſing and ſwearing; and it was quaſhed, becauſe the evidence was not ſtated and ſet out ſo as that the Court could judge of its ſufficiency.

y Burr. 2062.

It ſet forth, that on ſuch a day, and at ſuch a place, R. E. one of the churchwardens of B. came before him, and gave information, &c. The information fully charged the offence, ſpecifying that the defendant was parſon of the pariſh, and that he officiated as ſuch on one of the days mentioned in the act of parliament, and omitted and neglected to read, &c. and that the defendant was duly ſummoned, but neglected to appear or make any defence; whereupon the juſtice proceeded to examine into the truth of the ſaid charge; and *the ſame as ſet forth being duly proved* before him, as well by the oath of the ſaid R. E. as by the oath of G. C. of B. aforeſaid, farmer, a credible witneſs, he adjudged the defendant guilty, and convicted him in 5l.

The Court ſaid, that the evidence ought to be ſet out. They ſaid, this was clearly ſo ſettled in the *King v. Biſſex*[z] in this court. Whereas here it is only ſaid, "the ſame as ſet forth be-"ing duly proved." They refer alſo to the above caſe of the *Queen v. Green*, to the *King v. Vipont*[a], and to the above caſe of the *King v. Lloyd*, which was cited and relied on by Mr. J. Denniſon in delivering the reſolution of the Court in the caſe of the *King v. Biſſex*, where he declared, that the caſe of the *King and Queen v. Pullen* and others (of oath made de veritate præmiſſorum generally, without ſetting it forth eſpecially, being ſufficient in convictions) is not law now; it having been ſince that caſe quite ſettled, "that upon a conviction "it is neceſſary that the evidence ſhould "be ſet out, that the Court may judge "whether the juſtices have done right;" but upon an order it is not neceſſary, becauſe the Court will preſume they have done right. The conviction was quaſhed. This alſo was confirmed by the Court in the *King v. Read*[b].

[z] Trin. 1756. 29th & 30th G. II.

[a] 3 Burr. 1163. ante, 17, &c.

[b] Dougl. 469.

It being therefore clear that general words of reference are not ſufficient, it may be laid down, ſecondly, that the evidence

evidence muſt, in *moſt* caſes, be at leaſt as full as the information.

Thus in ſuch caſes as that of the *Queen v. Burnaby*[c], where the offence was in the nature of a *treſpaſs de bonis aſportatis*, it muſt, from the reaſon of the thing, be as neceſſary (if not more ſo) in the evidence, as in the information, to ſtate the number and nature of the things taken and deſtroyed; and the ſame obſervation ſeems to hold as to caſes ſimilar to the *King v. Catherall*[d], which was a conviction and commitment for not accounting for money received as collector under a turnpike act.

[c] Lord Raym. 900. ante, 33.

[d] Stra. 900. ante, 34.

But thirdly, *in ſome caſes, and in ſome particular expreſſions*, the evidence is not required to be as full as the information, nor, perhaps, to tally preciſely with it.

Thus, if a ſtatute varies the puniſhment of an offence, according to the rank, age, or other circumſtances of the offender, and the information ſtates his rank, age, or the other circumſtances pointed out, the evidence, provided it refers to the perſon mentioned in the

information, need not ſhew his rank, age, &c. This was the caſe of the *King v. Tucke*[e], which was a conviction upon ſtat. of 6 & 7 W. III. c. 11. (before a ſummary conviction had been eſtabliſhed by 19 G. II. c. 21.) for profane curſing and ſwearing. The information deſcribed the defendant to be a gentleman, and above the age of ſixteen; and, though the witneſs did not ſwear to *that deſcription*, yet ſince he ſwore that *prædictus* J. T. did ſwear, &c. the Court held that it was ſufficient.

[e] Ld. Raym. 1386.

Under ſome ſtatutes alſo it ſeems that a particular act or conduct ſworn to by the witneſs, if it amount to the offence deſcribed in the *ſtatute*, though it be not exactly a ſimilar deſcription of the offence to that in the *information*, may be ſufficient, and ſupport an adjudication in terms ſimilar to the information.

The *King v. Smith*[f], was a conviction of the defendant on the ſtatute of 9 & 10 W. III. c. 27. ſect. 8. for trading as a hawker, pedlar, or petty chapman without having a licenſe *.

[f] 3 Burr. 1475.

It

* The act of 29 G. III. chap. 26. has now given a ſummary form.

It was objected on behalf of the defendant, that the *evidence* which the juſtice had ſtated was not ſufficient to ſupport his adjudication, "That the defendant had no licenſe." The charge was, that the man had traded as a hawker, pedlar, or petty chapman, in ſelling, &c. without having a licenſe. The evidence ſtated is only, that the man *refuſed to produce* any licenſe: whereas the trading without having any licenſe, and the refuſing to produce his licenſe (if he has one) are quite diſtinct offences, &c. And the man's having confeſſed that he *traded* as a hawker, &c. is no ground for convicting him for trading as ſuch without a licenſe, notwithſtanding his refuſal to produce it. And though the 8th ſection of the act gives the ſame forfeiture for not producing as for not having one; yet that cannot alter the nature of the offence.—But Lord Mansfield ſaid, he could ſee no doubt of the conviction's being a good one upon the 8th clauſe. The conviction was affirmed *.

Under

* The reporter obſerves (juſtly as it ſhould ſeem) that the 8th ſect. of the act ſeems to conſider not producing to be the ſame offence, and the ſame thing, as not having.

A con-

Under this head of caſes where the evidence need not be ſo *full* as the information, may be claſſed the doctrine that now ſeems to be admitted by the Court of K. B. that, in a conviction under the Game act of 5 An. c. 14. though the *information* muſt negative all the qualifications of the ſtat. of Car. II. they need not be particularly ſet out in the *evidence* *.

5 1 Term. Rep. 125.

The ſecond objection to the conviction in *R. v. Crowtherg* was, that the qualifications required by the ſtat. 22 Car. c. 25. were not negatived by the evidence; and in ſupport of it the words of Mr. Juſtice Denniſon in *R. v. Jarvis* † were cited, and alſo the words of Mr. Juſtice Aſhurſt in *R. v. Wheatman* ‡, who ſaid in

A conviction for this offence would now be under ſect. 11. of 29 G. III. c. 26. and a juſtice would, it ſhould ſeem, be warranted under that clauſe, either to convict for trading without a licenſe on the evidence of the party's refuſing to produce one, or (if the demand of the licenſe ſhall have been made by a perſon authoriſed by the commiſſioners for hawkers) to conſider the refuſal as a ſubſtantive offence; but by the form there given, it appears, that the evidence need not be ſet out though the information ſtill muſt.

* Vid. obſervations on the caſe of *R. v. Jarvis*, ante, 43.

† Vid. ante, 41. ‡ Ante, 46.

in that caſe, that " evidence muſt prove, " but cannot ſupply, any defects in the " information." The Court quaſhed the conviction on the firſt objection*. " As to the other point" (they ſaid) " there is no caſe in which it has been " directly decided that the evidence " ſhould negative every particular qua- " lification. It cannot be ſo from the " nature of the caſe."

A fourth obſervation is, that *in ſetting forth the act or acts of the defendant that conſtitute the offence, the evidence ſhould,* IN GENERAL, *be more particular than the information.*

Reaſon ſeems to require this, where the caſe will admit of it. In ſome inſtances the offence can only be deſcribed generally in the information, and yet conſiſts, either of a number of diſtinct acts, which, in the aggregate, conſtitute the offence, and muſt therefore be ſet forth in the evidence, or of ſome act that from its nature muſt have been in point of fact, particularly ſet forth by the witneſs, and therefore ought to be ſo by the juſtice.

Of the firſt ſort ſeems to be the caſe of

* Vid. ante, 81.

of *King v. Little**, where it was held, that a ſingle act of trading was not ſufficient to prove a man to be ſuch a hawker, pedlar, and petty chapman, as ought to take out a licenſe.

Of the latter kind ſeem to be thoſe caſes where the deſcription of the offence given by the ſtatute is ſo general as to admit of, and indeed require, a more circumſtantial detail of the fact when it is to be proved in evidence.

We muſt, however, except from this doctrine the convictions under 5th An. c. 14. for the preſervation of the game; for as to them it has been determined (in two caſes) to be ſufficient if the evidence is ſtated in the ſame general terms as the information.

The firſt of thoſe was the *King v. Hartley*[h]. This was a conviction under 5 An. c. 14. for keeping and uſing a greyhound to kill and deſtroy the game. The information ſtated, that, "T. H. "of the pariſh of T. in the weſt riding "of the county of York, did, at the "pariſh of T. aforeſaid, in the weſt rid-"ing

[h] East. 22 G. III. Cald. Rep. p. 175.

* Vid. Ante, title Confeſſion, p. 66.

" ing aforeſaid, within three months
" now laſt paſt, viz. &c. keep and uſe *
" *a certain dog called a greyhound*, to
" kill and deſtroy the game, &c. And
" the conviction further ſtated, that on
" the 24th day, &c. at, &c. one credi-
" ble witneſs, to wit, J. F. of the pariſh
" of Carleton, in the Weſt Riding
" aforeſaid, yeoman, cometh before
" &c. and being then and there ſworn,
" &c. depoſeth, &c. in the preſence of
" the ſaid T. H. that within three
" months next before the information
" was made before me the ſaid juſtice
" by the ſaid T. B. (the informer) as
" aforeſaid, to wit, on the day
" of aforeſaid, in the 21ſt year
" aforeſaid, the ſaid T. H. at the pariſh
" of T. aforeſaid, in the Weſt Riding
" aforeſaid, being a perſon not then
" having lands, &c. &c. did keep and
" uſe a certain dog, called a grey-
" hound, to kill and deſtroy the game.
" Whereupon all and ſingular the mat-
" ters, things, and evidences above-
" mentioned, being fully heard and
" underſtood by the ſaid T. H. and for
" as much as the ſaid T. H. doth not
" offer, allege, or ſay any thing, or pro-
" duce

* An objection was made to this deſcription of greyhound; but the Court held, it was a ſufficient averment of his being a greyhound.

" duce or offer any evidence in anſwer
" to the ſaid information, evidence mat-
" ters, things, and premiſes, or any of
" them charged on him as aforeſaid, it
" manifeſtly appears to me, the ſaid
" juſtice, that the ſaid T. H. is guilty
" of the premiſes in manner and form
" aforeſaid, above laid to his charge.
" Wherefore I the ſaid juſtice, upon
" the oath, &c. do adjudge, that the ſaid
" T. H. on the day of a-
" foreſaid, at, &c. in, &c. did keep
" and uſe a certain dog, called a grey-
" hound, to kill and deſtroy the game,
" and that the ſaid T. H. had not any
" lands, &c. and thereupon, I the ſaid
" juſtice, &c. do convict, &c."

The firſt and chief objection taken to this conviction was, that it was not fully and ſufficiently ſtated that there had been a uſing of the greyhound, *i. e.* how, and in what manner, and for what purpoſe. The anſwer was (in ſubſtance) that the bare keeping of a greyhound is an offence within the ſtatute; and the caſes of *R. v. Filer* and *R. v. Gardner* were ſtated as to the diſtinction between keeping of a dog (of the kinds enumerated) and a gun, which may be kept for the protection of a man's houſe,

Lord

Lord Mansfield.—"Convictions muſt "certainly be preciſe, that the Court "may ſee whether the offence commit- "ted falls within the juriſdiction of the "magiſtrate; and, whatever the con- "ſequences are, they muſt be quaſhed, "if not ſo. In this act there are two "offences deſcribed, a keeping and a "uſing; and the legiſlature mean that "there may be a keeping to deſtroy, "which is not of neceſſity to be prov- "ed by uſing for that purpoſe. If it "were ſo, it would be tautologous; for "ſuch evidence would be a proving of "the other offence. The keeping there- "fore of a thing prohibited being an "offence under the act, it is neceſſarily "prima facie evidence of a keeping for "the purpoſe prohibited; and it is in- "cumbent on the defendant to ſhew "that it is kept for another purpoſe; as, "in the preſent caſe, that it is a houſe "dog, a favourite dog, or a particular "ſpecies of greyhound. The deſcrip- "tion cannot be more preciſe, unleſs "ſome particular inſtance of uſing is "ſhewn; which, if keeping of itſelf "conſtitutes an offence, cannot be ne- "ceſſary."

Willes, J.—"The caſe of the *King v. Gardner*, is in point, and muſt go-

vern

" vern this. There is hardly another " uſe to which this ſpecies of dog can " be applied. The conviction was af- " firmed.

On the above report (which I find confirmed by the manuſcript note of a gentleman of acknowledged accuracy*) it is obvious to remark, that the Court ſeem carefully to diſtinguiſh between a conviction for a *greyhound*, and a conviction for a *gun* (as laid down in *R. v. Filer* and the other caſes) and to have gone entirely upon that diſtinction, laying that part of the evidence that mentions the *uſing* out of the queſtion, and going upon the keeping alone, as a diſtinct and ſubſtantive offence. General evidence of *keeping* may be ſufficient where *keeping* is *in itſelf* an offence:

* In that note Ld. M.'s words are ſtated as follows:—" Convictions muſt be preciſe, and " whatever the conſequences are, they muſt be " quaſhed if not preciſe. But here are *two* of- " fences. *If keeping were neceſſary to prove uſing,* " *or uſing to prove keeping, it would be tautologous.* " Keeping is an offence; but the defendant may " ſhew that he kept it for another purpoſe. The " deſcription cannot be more preciſe, unleſs a " particular inſtance of deſtruction were ſhewn, " which is not neceſſary, as keeping is an of- " fence. A dog called a greyhound can mean " nothing but a greyhound."

I have ſeen another MS. note of the caſe to the ſame effect.

fence; and yet it may not follow, that, in a caſe which requires the proof of *uſing* likewiſe (the nature of which admits of and appears to call for the proof of particular acts) ſuch a general ſtatement of evidence muſt neceſſarily be held good.

However, in the *King v. Thompſon*[k], the ſame point came in queſtion as to a conviction for a *gun*, and the court held the above caſe of *R. v. Hartley* to be an expreſs authority in ſupport of the conviction.

[k] 2 Term. Rep. 18.

In that caſe * the evidence only was, that the defendant, on ſuch a day, &c. *did keep and uſe a gun to kill and deſtroy the game.*

On the firſt argument, which turned on another point †, the Court themſelves ſuggeſted this queſtion, "Whether the "evidence was ſufficiently ſet forth, ſo "that they could ſee by what act the "defendant had incurred the penalty;" for they obſerved, that the act of keeping a *gun* was in itſelf ambiguous, and that it muſt be ſhewn to be kept for the purpoſe of killing game, in order to bring the party

* See it ſtated at large, ante.

† Vid. poſt, title **Judgment**.

party keeping within the act of parliament. It was not like keeping a *greyhound*, or a *ſnare*, which could not be kept for any other purpoſe, and which was expreſsly prohibited by the act. On a ſubſequent day (after it had been argued by Mr. Wood againſt the conviction, and Mr. Chambre in ſupport of it *) Mr. Juſtice Aſhhurſt ſaid :— 'If this were a new caſe, I ſhould moſt 'undoubtedly be of opinion, that this 'conviction could not be ſupported; 'becauſe I think that the evidence 'ſhould

* Mr. Chambre is ſaid to have relied a good deal on the circumſtance of the precedent in Burn's Juſtice being in this form. To ſhew that this had weight, he cited Jones v. Smart (1 Term. Rep. 44.) where the majority of the Court (who held that eſquires and perſons of higher degree were not to be conſidered as qualified under the game laws, unleſs they had the qualification of property) relied on the precedents being conſtantly in that form (viz. inſerting the word "of" before the words "other perſons of higher degree" in negativing the qualifications) from whence he inferred, that in the preſent caſe the precedent in Burn ought to have weight. But quere whether, as to this point (of ſtating the evidence of uſing generally only) the precedents have uniformly followed that in Burn? In ſome of the caſes ſtated in the preceding part of this book it ſeems to have been otherwiſe; (vid. R. v. Kempſon, ante, 79. R. v. Crowther, ante, 80; viz. alſo a precedent on the ſame ſubject, in the precedents, title Game, ſettled by Mr. Dunning).

'ſhould be ſet forth particularly, that 'we may judge whether the juſtice has 'convicted upon proper evidence. The 'fact of keeping or uſing the gun for 'the purpoſe of deſtroying game ſhould 'appear; but it is only ſtated here that 'the defendant kept and uſed, &c. 'which is the *reſult* of his evidence.— 'Then, whether he kept it for the pur-'poſe of killing game, is likewiſe a queſ-'tion of law; for an ignorant witneſs in 'the country might fancy that a woodcock 'or a rabbit was game. So that it ſeems 'to me, that permitting this general 'evidence to be ſtated, is allowing the 'witneſs to give his opinion on the law, 'as well as the facts. But at the ſame 'time, as precedents are uſually in this 'form, and as the conviction in *R. v. Hartley* was ſimilar to the preſent, it 'is better to ſupport this conviction, 'than by quaſhing it to overturn all 'former precedents.'

Buller, J.—'If this precedent had 'never been adopted, I ſhould have 'been of opinion that the evidence 'ſhould have been fully ſet forth; but 'after ſo many convictions have been 'made in the ſame form, it would be 'dangerous to quaſh the preſent. The 'diſtinction taken in the *King v. Filer* 'is good law. It is not an offence to

'keep

'keep or uſe a gun, unleſs it be kept or uſed for the purpoſe of killing game. But here it is ſtated by the evidence, that the defendant did keep and uſe a gun to kill and deſtroy the game. As to the other queſtion reſpecting game, I cannot agree that the witneſs, in ſwearing that the defendant uſed a gun to deſtroy game, would be ſwearing to a queſtion of law; becauſe it is ſettled by act of parliament, and every man is bound to know what is game. If he ſwears that to be game which is not ſo in law, he would be guilty of perjury. Game muſt be underſtood in its legal ſenſe.'

Groſe, J.—'I cannot give my conſent to ſupport this conviction. The juſtice ſhould return particularly all the facts and the concluſion in the conviction: firſt the information, the ſummons, the appearance, or defendant's default in not appearing, that the information was read to the defendant, that he was aſked what he had to plead, the whole of the evidence particularly, and the adjudication. The witneſs ſhould ſwear to the

'the facts, and not to the law; and in 'this caſe it is almoſt incredible that 'the witneſs ſhould have ſworn in the 'manner in which this evidence is ſet 'out. The juſtice ſhould not have re-'ceived it if it were offered in this ge-'neral way; but ſhould have queſti-'oned the witneſs as to the manner in 'which this gun was kept, for what 'purpoſe it was uſed, and what parti-'cular kind of game he killed or at-'tempted to kill. All theſe particulars 'ſhould have been ſet forth, in order 'that we might judge whether they 'conſtituted an offence within the act 'of parliament. Here the witneſs 'ſwore to the law: namely, "that the 'defendant kept and uſed a gun to kill 'and deſtroy the game." And in *R. v. Baker*[1], a conviction for taking pil- 1 Stra. 316. 'chards was quaſhed, becauſe the wit- ante. 'neſs ſwore generally that the defend-'ant was *guilty of the premiſes*; which 'was taking upon himſelf to ſwear to 'the law. Now the reaſoning in that 'caſe applies ſtrongly to the preſent; 'for the evidence here ſtated only a-'mounts to that, "that the defendant 'is guilty of the premiſes." I confeſs 'that *R. v. Hartley* is a conſiderable 'authority the other way. But I would 'rather chooſe to decide this caſe ac-

'cording

'cording to that of *R. v. Baker*; be-
'cauſe, I think, nothing can be more
'miſchievous to the country than ſuf-
'fering a juſtice of the peace to ſtate a
'conviction generally: and there can
'be no inconvenience in ſtating the
'whole matter particularly for the opi-
'nion of this court, if the juſtice does
'not exceed his authority. Although
'the preſent conviction cannot be quaſh-
'ed, becauſe my brothers have given
'their opinions in ſupport of it, yet I
'did not chooſe the queſtion ſhould paſs
'*ſub ſilentio*; eſpecially as this declara-
'tion of my opinion may have the ef-
'fect of inducing juſtices of the peace
'in future to ſtate the whole matter up-
'on the record.'

The next day (the matter having ſtood over on another point) Mr. J. Aſhurſt declared himſelf of the ſame opinion that he had given the day before. Mr. J. Buller ſaid, 'With reſpect to the 'other queſtion (viz. the preſent), that 'alſo has been decided by the caſe of 'the *King v. Hartley*. There the firſt 'objection was, that the witneſs had 'ſworn to the law; for that what was 'game was a queſtion of law; but that 'objection did not prevail. The ſe-

'cond

'cond objection was, that the evidence 'was not ſufficiently ſet forth, becauſe 'the manner of keeping or uſing the 'greyhound did not appear, and the 'conviction only purſued the language 'of the act of parliament. Upon that 'occaſion Lord Mansfield ſaid, convic-'tions muſt be preciſe, that the court 'may ſee that they fall within the juriſ-'diction of the juſtices. There are two 'offences deſcribed by the act of parli-'ament, *keeping* or *uſing* for the pur-'poſe of deſtroying game. *There may 'be a keeping without its being for the 'purpoſe of deſtroying game*; therefore 'there ſhould be evidence of the pur-'poſe for which it is kept. But the 'evidence ſtates, that defendant *uſed* 'as well as kept the greyhounds for the 'deſtruction of game.' So that this caſe goes the whole length of deciding the other objection which was made yeſterday.

Groſe Juſtice, 'As the precedent 'in Burn (though it ſeems to me a 'faulty one) has been recognized by 'this Court in *R. v. Hartley*, of which 'I was not aware before yeſterday, I 'think it muſt be ſupported. It might 'be highly inconvenient to overturn 'it; and I ſhould be ſorry that any

'opinion

'opinion of mine ſhould ſhake the au-
'thority of an eſtabliſhed precedent;
'ſince it is better for the ſubject, that
'even faulty precedents ſhould not be
'ſhaken, than that the law ſhould be
'uncertain.' The conviction was therefore affirmed.

After the above determination, it would be preſumptuous to argue further upon this particular caſe. But it may be proper to caution juſtices of the peace againſt relying on this caſe in framing any other conviction than thoſe *under the ſame act of parliament*; for the Court will hardly extend the authority of a caſe determined upon precedent alone, and contrary to the general principles ſo clearly laid down by them, to any caſe that does not fall exactly within the letter of it.

OF

OF THE

Judgment or Adjudication.

THE JUDGMENT is a neceſſary part of every conviction; and ſhould contain, 1ſt, *An adjudication that the defendant is convicted;* and 2dly, *An adjudication of the forfeiture or penalty.*

As to the firſt, the general way of expreſsing it is to ſay, "*that the defendant is convicted of the ſaid offence againſt the form of the ſtatute.*" This mode of expreſſion ſeems to have been conſidered as ſo efficacious, that in *R. v. Lammas*[a], on a conviction upon the ſtatute of W. & M. for keeping a warehouſe for low wines, &c. without giving notice to the next officer of exciſe, this form of adjudication was deemed competent to cure a defect in ſtating the evidence, viz. the not having ſhown

[a] Skin. 562.

 that

that the defendant was proved to be a common diſtiller*.

However, though this ſeems to be, in general, the beſt mode of adjudication, the juſtice is not tied exactly to thoſe words; for in *R. v. Thompſon*[e], where the conviction (after ſtating the evidence) concluded thus: "And thereupon the ſaid defendant, the ſaid day of at, &c. before me the ſame juſtice, by the oath of one credible witneſs aforeſaid, according to the form of the ſtatute aforeſaid, *is convicted, and for his offence aforeſaid hath forfeited*, &c." Though it was objected that it did not appear *of what* the defendant had been convicted, yet the court held it to be ſufficient.

[e] 2 Term. Rep. 18.

On the other hand, where more offences than one are charged in the information (as where a man was charged on one of the Lottery Acts with *dealing in ſhares of lottery tickets*, and alſo with *regiſtering tickets*, without a licenſe), it is not ſufficient to ſay he is "convicted of the ſaid offence;" but if (which the Court ſeemed to doubt) both offences might have been included in one conviction, he ſhould have been convicted of both[f].

[f] *R. v. Salomons.* E. 26. G. III. 1 Term. Rep. 249.

What

* Sed Q. if that caſe be law?

What evidence will juſtify a conviction under any ſtatute muſt depend, in each particular caſe, upon a compariſon of the evidence with the information, and with the ſtatute on which the conviction is made. But it may not be uſeleſs to take notice here of two or three caſes of late years, in which ſome ſtatutes appear to have been greatly miſapprehended by juſtices of the peace, in order to prevent ſimilar miſtakes in future.

The firſt is *R. v. Clarke*[b], which was a conviction upon 33 H. VIII. c. 9. ſ. 16. in effect as follows:

[b] East. 14. G. III. Cowp. 35.

'Be it remembered, that on, &c. 'S. P. and J. B. of, &c. came before 'me W. C. one, &c. and gave me to 'underſtand and be informed, that 'T. C. of, &c. labourer, on the 16th of 'Auguſt, 1773, did uſe and play at a 'certain unlawful game with bowls 'and pins, called bowlruſhing, with di-'vers liege ſubjects of our ſaid lord the 'king, and did then and there receive 'divers ſums of money of the ſaid ſub-'jects, playing at the ſaid game againſt 'the form, &c. and againſt the peace, '&c. and pray that the ſaid T. C. may

'be convicted of the ſaid offence: 'Whereupon afterwards, on, &c. the 'ſaid T. C. being apprehended and 'brought before me, &c. to anſwer to 'the ſaid charge, &c. the ſaid T. C. is 'aſked by me if he can ſay any thing for 'himſelf why he the ſaid T. C. ſhould 'not be convicted of the premiſes above 'charged upon him, &c. and thereupon 'the ſaid T. C. of his own accord fully 'acknowledges the premiſes, &c. to be 'true as charged, and does not ſhew to 'me any ſufficient cauſe why he ſhould 'not be convicted thereof. Whereup-'on all and ſingular the premiſes, &c. 'being conſidered, and due deliberation being thereunto had, I do adjudge and determine that the ſaid 'T. C. is guilty of the premiſes, &c. 'and that the ſaid T. C. *is therefore an 'idle and diſorderly perſon*, and is alſo 'therefore *a rogue and vagabond* within 'the true intent and meaning of the 'ſtatutes in that caſe made and provided. And the ſaid T. C. is accordingly by me convicted of the offence 'charged upon him in and by the ſaid 'information, *and of being an idle and 'diſorderly perſon*, and *a rogue and vagabond*, in form aforeſaid: and I do 'hereby adjudge and order, tha the 'ſaid T. C. be therefore *committed to the*

'*the houſe of correction*, there to re-
'main for the ſpace of one month,
'being a leſs time than until the next
'general quarter ſeſſions of the peace,
'or until the ſaid T. C. ſhall find ſuffi-
'cient ſureties to be bound in recogni-
'zance to appear before the next quar-
'ter ſeſſions, and for his good beha-
'viour in the mean time."

The Court at firſt quaſhed this con-viction, on an objection, that it was not alledged in the information, that the playing at bowls was *out of the defend-ant's own orchard*, and it is only unlaw-ful *ſub modo*. Afterwards, in the ſame term, Lord Mansfield ſaid, 'A doubt 'had ariſen, whether, as by another 'part of the 16th ſection of 33 H. VIII. 'it is made unlawful for a *labourer* to 'play at any time out of Chriſtmas, the 'conviction was not good, as the de-'fendant was ſtated to be a labourer, 'and the playing laid on the 16th of 'Auguſt. But,' his lordſhip obſerved, 'the puniſhment appeared to be under 'the Vagrant act, 17 G. II. c. 5. ſ. 2. 'therefore deſired it might be ſpoken to 'again upon this point, and alſo whe-'ther it was a good adjudication under 'this latter ſtatute.'

Afterwards Mr. J. Aſton (Lord M. abſent) delivered the opinion of the court.

'This conviction is a jumble and 'confuſion of charges and puniſhments. 'It is a conviction for playing at bowls, 'and the puniſhment inflicted is impri- 'ſonment as an idle and diſorderly per- 'ſon. The ſtatute 33 H. VIII. c. 9. ſ. '16. lays a penalty of 20s. on every la- 'bourer playing at bowls out of Chriſt- 'mas. The puniſhment is therefore 'clearly not under this ſtatute. The ſta- 'tute 17 G. II. c. 5. ſ. 2. deſcribes four 'kinds of idle and diſorderly perſons, 'and being an explanatory act, we can- 'not go out of it. Now *bowling* is not 'an offence within any of theſe deſcrip- 'tions; conſequently the defendant is 'not puniſhable as an idle and diſor- 'derly perſon. But the puniſhment is 'under this latter ſtatute.' Conviction quaſhed.

Another material point was alſo ſet- tled in the caſe of *Cripps v. Durdene*, which was an action againſt a juſtice of peace for levying three more penalties, as for three more offences, on a baker for exerciſing his trade on a Sunday, contrary to 29 Car. c. 7. having already convicted

[e] Trin. 17 G. III. Cowp. 640.

convicted him in one penalty for a ſimilar offence *on the ſame day.* The Court held that this offence could be committed but once in the ſame day. 'For,' ſaid Lord Mansfield, 'on the conſtruction of the act of parliament, the offence is, exerciſing his ordinary trade upon the Lord's day; and *that* without any fraction of a day, hours, or minutes. It is but one entire offence whether longer or ſhorter in point of duration; ſo, whether it conſiſt of one or a number of particular acts. The penalty incurred by this act is 5s. There is no idea conveyed by the act itſelf, that if a tailor ſews on the Lord's day, every ſtitch he takes is a ſeparate offence; or if a ſhoemaker or carpenter work for different cuſtomers at different times on the ſame Sunday, that thoſe are ſo many ſeparate and diſtinct offences. There can be but one entire offence on one and the ſame day. And this is a much ſtronger caſe than that which has been alluded to of killing more hares than one on the ſame day. Killing a ſingle hare is an offence; but killing ten in the ſame day more will not multiply the offence, or the penalty impoſed by the ſtatute for killing one.

'one*. Here repeated offences are not 'the object which the legiſlature had in 'view in making the ſtatute, but ſingly 'to puniſh a man for exerciſing his or-'dinary trade and calling on a Sunday. 'Upon this conſtruction the juſtice 'had no juriſdiction with reſpect to the 'three laſt convictions.'

They alſo held, that in ſuch a caſe as this an action would lie againſt the juſtice, though the convictions had not been quaſhed, as he had no juriſdiction, after having convicted in one penalty. It may, however, be remarked, that the above determination cannot be meant to extend to *all* offences under penal ſtatutes; ſome of which (for inſtance the act againſt ſwearing) admit of ſeveral offences, and conſequently of ſeveral convictions, on the ſame day. But the nature of the act that conſtitutes the offence, as well as the intent and expreſſions

* This ſeems to be becauſe it is not the *killing of the hare* that conſtitutes the offence, but uſing the dog, gun, or engine with which the hare was killed. Sed Q the point here laid down, and vid. *R. v. Gage*, ante, p. 63. where a conviction in four penalties, for killing four hares, was held good; though it is to be obſerved that *this* objection was not made in that caſe.

ſions of each ſtatute, properly attended to, will be a better guide than any general direction that could be given.

The ſecond and laſt branch of the judgment is, *a declaration of the forfeiture or penalty incurred*, and *a diſtribution of the ſum forfeited*, in caſe the ſtatute ſo directs.

This declaration is held to be a neceſſary part of every conviction. It is ſaid, indeed, in Chandler's caſe, as reported in Salk. 378, that *ideo conſideratum eſt*, without adding, *et quod forisfaciat*, was held ſufficient; for the judicial part ends at the conviction; the reſt is only conſequence and execution. But the other reports of that caſe differ in this particular. In Carthew 501, the objection is ſaid to have been, that there was no conditional judgment for ſetting the defendant in the pillory, *ſi*, &c. and Lord Raymond ſtates, that the third exception (the only one that bears upon this point) was, 'that the judgment is 'only *quod forisfaciat*, whereas it ought 'to be *ideo conſideratum eſt*.' At all events, the latter determinations have fully eſtabliſhed the neceſſity of ſetting

forth the forfeiture; and it ſeems the ſame as to any other kind of puniſhment, at leaſt if any diſcretion is left to the magiſtrate as to its nature or degree.

[f] 8 Mod. 175.

R. v. Aſhton[f]. This was a conviction on ſtat. 1 G. I. c. 48. for deſtroying fruit trees, the puniſhment for which offence is, to be ſent to the houſe of correction for three months, and to be publicly whipped once in every month during that time. And it was moved to quaſh this conviction, becauſe it did not ſpecify the puniſhment inflicted by that ſtatute; for that being a particular puniſhment, viz. to be ſent to the houſe of correcton for three months, &c. ought to be ſet forth in the conviction, ſince this offence is to be heard and finally determined by the juſtices.

The report ſays, the *better opinion* was, that this being a ſpecial judgment of the two juſtices, they ſhould have ſpecified the puniſhment which the ſtatute inflicts upon the offender, becauſe it may be different from the puniſhment inflicted by them. However, there being no forfeiture for this offence, it was

was therefore held that *ideo conſideratum eſt quod convictus eſt* was ſufficient.

R. v. Sir E. Elwell and others. The defendants were convicted, upon view of three juſtices in Kent, of a forcible detainer, and were by them committed to maidſtone gaol till they ſhould pay a fine to the king. Upon which they ſued out a certiorari to remove the conviction into the King's Bench, and a habeas corpus to bring up their bodies. The Court held, that this commitment, being that the defendants ſhould lie in priſon till they pay their fine, and no fine was ſet, the conviction was nought, and was quaſhed, and the defendants diſcharged, February 18, 1727.

R. v. Hawkes[g]. A conviction for killing deer was quaſhed, becauſe it was only *convictus eſt*, without any judgment *quod forisfaciat*. [g] 2 Stra. 858.

In *R. v. Ripont et al.*[h]* the third objection to the conviction (which on 12 G. I. c. 34. for preventing unlawful combinations of workmen employed in the woollen manufactures, &c.) was, that it is only ſaid, 'they are *convicted* 'for [h] 2 Burr. 1163.

* Quod vid. ante, tit. **Evidence**, p. 71.

'for unlawfully entering into such com-
'bination.' It ought to proceed, *quod forisfaciat*, and expresly adjudge the forfeiture. (The above case of *R. v. Hawkes* was cited and stated.) They ought to have awarded the particular punishment, as the act does not fix the duration of the punishment, but leaves the time of imprisonment quite discretionary, 'for any time not exceeding 'three months.' Therefore this case differs widely from cases where the punishment is ascertained, and necessarily flows from the conviction.

As to this objection, Lord Mansfield is stated to have said: 'Here the pu-
'nishment is discretionary as to the
'length of the time of imprisonment;
'and here is no *judgment* at all, only a
'conviction. They ought to have gone
'on and adjudged the forfeiture. There-
'fore on both these objections this
'conviction ought to be quashed; for,
'however useful a statute this may be
'for the benefit of trade, yet the
'justices must convict according to
'law.'

Mr. J. Dennison concurred in both points. And to the third objection: the time,

time, the duration of the commitment, ought to be aſcertained upon the conviction. The ſtatute does not fix it; it only ſays, "for any time not *exceeding* "ſix months."

Mr. J. Wilmot concurred in both. As to the third objection: A conviction is equal to a verdict and judgment; but this is a verdict without a judgment. In the caſe of *R. v. Hawkes*[i], it was ſettled, "that there muſt be a judgment of "forfeiture." It was a conviction for deer-ſtealing, on 3 & 4 W. & M. c. 10. and there, though the penalty was certain, and though the act of parliament diſtributes the forfeiture, yet it was holden that there muſt be a judgment to levy it; for every execution muſt be founded on a judgment. The caſes of *Regina v. Wingrave*[k], and *Regina v. Serle*, in B. R. were both quoted by Mr. Fazakerly in ſupport of the exception.

[i] Hil. 3 G. II. B. R.

[k] H. 2 An. B. R.

There was alſo a caſe in Trin. 9 G. I. B. R. *Rex v. Aſhton*[l], upon a conviction for deſtroying fruit-trees, contrary to 1 G. I. c. 48. The words of the conviction are, "*igitur conſideratum eſt per* "*nos quod victus eſt.*" The court held there ought to be a judgment *quod forisfacias*, or *quod committatur*. But this is

[l] Vid. ante.

is a much ſtronger caſe; becauſe here is a diſcretion to commit, either to the houſe of correction, there to remain and to keep at hard labour for any time not exceeding three months; or to the common gaol of the county, &c. as they ſhall ſee cauſe, there to remain without bail or mainprize for any time not exceeding three months. Conviction quaſhed*.

As to the diſtribution of the forfeiture, it would ſeem there need not be any ſtated by the juſtice, where the ſtatute expreſsly gives it in certain proportions.

z Salk. 383. Vid. ante. In *R. v. Barret*[z], the fourth objection was, that it ſays, "quod convictus eſt "et forisfaciet ſummam 20s juxta for-"mam ſtatuti," without making a diſtribution, which ought to be 10s. to the party grieved, 10s. to the poor, &c. But the Court held it was well enough.

But

* The caſe of *R. v. Aſhton*, as cited by Mr. J. Wilmot, is very different from the report of it in 8 Modern (as above given), and probably Mr. J. Wilmot's ſtatement is the right one. But at all events, *that* caſe is no way contrary to the preſent; for there the quantum of puniſhment is exactly limited by the ſtatute.

But where juſtices are required by a penal ſtatute to diſtribute the penalty on conviction amongſt certain perſons, *according to their diſcretion*, an adjudication that the forfeiture be diſpoſed of "*as the law directs*" is bad; for in ſuch caſes the juſtice or juſtices ſhould adjudge what the ſeveral proportions ſhall be[e].

[e] R. *v. Dimpſey.* Mich. 28 G. III. 2 Term. Rep. 96.

Where a ſtatute ſays, that "upon "non-payment of the penalty and coſts, "the offender ſhall be committed for "ſuch a time, or until the penalty and "*charges* ſhall be paid," (which is the caſe of 6 G. I. c. 48.) and the conviction adjudges him to be impriſoned a certain time, *or* until the forfeiture, *together with the charges*, previous to and attending the ſaid conviction, be paid, but does not aſcertain what the charges are, it is bad[f].

[f] *R. v. Abraham Hall.* Cowp. 60.

PRECEDENTS.

PRECEDENTS*.

Auctionier †.

Borough of Reading in the County of Berks. } BE it remembered, that on the 27th day of December, in the 16th year of the reign of our ſovereign Lord George the Third now King of Great Britain, at the borough of Reading aforeſaid, in the ſaid county of Berks, William Pearce, one of his majeſty's collectors of exciſe, in his proper perſon, cometh before us Edward Skeate White, mayor of the ſaid borough, and John Richards, Eſq; two of the juſtices of our ſaid Lord the king, aſſigned to keep the peace of our ſaid lord the king ‡ *within* the ſaid borough, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors, within the ſaid borough committed; and as well

Rex. v. Mathew Vaſey. Conviction on the Auction Act, 17 G. III. c. 50. for ſelling goods without having taken out the licenſe therein required.

Information.

* Note. Several of the caſes in the preceding treatiſe may be conſidered as precedents, the convictions being ſtated at large in them.

† This, and one or two other precedents in the collection, have lately got into print from another channel; but, as the book in which they are inſerted contains chiefly indictments, and is not likely to be in the hands of country magiſtrates, I did not think fit to omit them.

‡ Qu. Whether an objection might not have been made to this part on the old caſes; and vid. R. v. Dobbyn, treatiſe, p. 18. and R. v. Lamden, ib. p. 20. but though it is not probable the Court would carry ſuch an objection further than it has been carried in the firſt of the above caſes, it is ſafeſt to ſay, "in *and for*," &c.

well for our ſaid lord the king as for himſelf in this behalf, giveth us the ſaid juſtices to underſtand and be informed that Matthew Veſey, after the 29th day of September, in the year of our Lord 1777, to wit, on the ſaid 27th day of December, in the 18th year of the reign of our ſaid lord the now king, in the ſaid year of our lord 1777, at the pariſh of St. Lawrence, in the ſaid borough of Reading, in the county of Berks, did, in the capacity of an auctionier, put up to public ſale, by way of auction, and did then and there vend and ſell by public ſale, by way of auction, divers goods and effects of the ſaid M. V. without firſt taking out a licenſe in the manner preſcribed by the ſtatute in that caſe lately made and provided.—contrary to the form of the ſtatute in that caſe made and provided. Whereby, and by force of the ſaid ſtatute, the ſaid M. V. hath, for his ſaid offence, forfeited the ſum of 50l. one moiety thereof (all neceſſary charges for the recovery thereof being firſt deducted) to his ſaid majeſty, and the other moiety to the ſaid W. P. and prays that the ſaid M. V. may be convicted of the ſaid offence according to the ſtatute in that caſe made and provided. And afterwards, on the 27th day of December, in the 18th year of the reign of our ſaid lord the now king, at the booughr of R.

afore-

aforeſaid, the ſaid M. V. having been previouſly ſummoned in purſuance of our ſummons iſſued for that purpoſe to appear before us the ſaid Edward Skeate White and John Richards, ſo being ſuch juſtices as aforeſaid at this time, to anſwer the matter of complaint contained in the ſaid information, he the ſaid M. V. appears before us the ſaid juſtices, to anſwer and make defence to the matters contained in the ſaid information, and having heard the ſame, the ſame M. V. is aſked by us the ſaid juſtices, if he can ſay any thing for himſelf why he ſhould not be convicted of the premiſes above charged upon him in form aforeſaid. And thereupon he ſays, that he is not guilty of the ſaid offence. Whereupon we the ſaid E. S. W. and J. R. ſo being ſuch juſtices as aforeſaid, do now proceed to examine into the truth of the ſaid complaint contained in the ſaid information, in the preſence and hearing as well of the ſaid W. P. as of the ſaid M. V. And thereupon on the ſame day and year laſt mentioned, at the borough of R. aforeſaid, George Faithful, a credible witneſs in this behalf, comes in his proper perſon before us, ſo being ſuch juſtices as aforeſaid, to prove the ſaid charge contained in the ſaid information againſt the ſaid M. V. and is now here by us the ſaid juſtices ſworn, and does before

Appearance of defendant in purſuance of a ſummons.

Plea, not guilty.

Witneſs appears and is ſworn.

before us the ſaid juſtices take his corporal oath upon the holy goſpel of God to ſpeak the truth, the whole truth, and nothing but the truth, of and upon the matters contained in the ſaid information, we having adminiſtered, and * having a competent power to adminiſter, ſuch oath to him in that behalf. And
Evidence. the ſaid G. F. being ſo ſworn, does on his ſaid oath ſay and depoſe, in the preſence and hearing of the ſaid M. V. that on the 27th day of December, in the year of our lord 1777, he ſaw the ſaid M. V. in the market-place, in time of market, in the pariſh of St. Lawrence, in the borough of R. in the county of Berks, mounted in a cart or roſtrum, putting up goods to public ſale by way of auction and the ſaid M. V. did then and there ſell publicly ſeveral goods by way of auction, and outcry to the perſons then and there aſſembled, he the ſaid M. V. acting therein as an auctionier; and that the deponent then and there bought of the ſaid M. V. by way of auction at the ſale, one lot of goods or wares of the ſaid M. V. containing ſeveral articles, that is to ſay, two knives, a razor and razor-caſe, and one comb, for which this deponent, being beſt or higheſt bidder

* This ſtatement, "that the juſtices had power to adminiſter the oath," is in moſt of the precedents. But, Q. Whether it be neceſſary? In indictments for perjury (which ſeem to have occaſioned its introduction here) the *giſt of the offence* is the oath, which perhaps makes that caſe a different one from this.

der, paid to the ſaid M. V. one ſhilling and one penny. And the ſaid M. V. does not produce any evidence to contradict the proof aforeſaid. Wherefore it manifeſtly appears to us the ſaid juſtices, that the ſaid M. V. is guilty of the premiſes charged upon him by the ſaid information. It is therefore conſidered and adjudged by us the ſaid juſtices, that the ſaid M. V. be convicted, and he is accordingly convicted, of the offence charged upon him by the ſaid information. And we do hereby adjudge, that the ſaid M. V. for the ſaid offence, hath forfeited the ſum of 50l. of lawful money of Great Britain; but we do mitigate the ſame to the ſum of 5l. and do adjudge and order that the ſaid M. V. do pay the ſum of 5l. * to be diſtributed as the law directs. In witneſs whereof we the ſaid juſtices to this preſent conviction have ſet our hands and ſeals at the borough of R. aforeſaid, in the ſaid county, the 27th day of December, in the 18th year of the reign of our ſaid lord the king, and in the year of our Lord 1777.

Judgment.

Forfeiture.

Mitigation of it.

E. S. W. (L.S.)
J. R. (L.S.)

The foregoing conviction having been removed into the court of K. B. two objections were taken to it:

Firſt,

* This is right where the ſtatute itſelf diſtributes it, and does not leave it to the diſcretion of the juſtice; otherwiſe the diſtribution ſhould be particularly ſet out. Vide treatiſe, title **Judgment.**

First, It is not ſtated whether the offence was committed in or out of the *bills of mortality*, which ought to have been expreſſed; becauſe the act impoſes different penalties upon unlicenſed auctioniers trading within or without that diſtrict; and a circumſtance that ſo materially varies the offence ought to be ſtated in the conviction.

Secondly, The information charges the defendant with having ſold goods *in the capacity of an auctionier*, but neither that nor the evidence alledges him *to be one*; for the witneſs only ſwears to a ſingle act of trading, ſo that he is not ſhewn to be ſuch a perſon as ought to take out a licenſe. To this point the caſe of *Rex v. Little* * was cited, in which the Court held, that a ſingle act of trading did not prove a man to be ſuch a hawker and pedlar as ought to take out a licenſe.

Lord M. ſaid, there was nothing in either objection. "The fact is ſaid to "have been committed at Reading, in "the county of Berks, which ſufficient-"ly ſhews it to be out of the bills of "mortality; for the Court muſt take "notice of the known diviſions of the "kingdom.

"As to the other objection; this caſe "is very different from that of a haw-"ker and pedlar. *Going about and ſel-*

"*ling*

* Vid. treatiſe, title **Confeſſion**.

"*ling* is neceſſary to make a man a "hawker and pedlar; but here a ſingle "act was enough to bring a man with-"in the ſtatute."

The reſt of the Court were of the ſame opinion. On the firſt point Mr. J. Buller cited *Rex. v. Theed* * on the Candle Act. He, however, ſeemed to think, that if the conviction had been for the *higher* penalty, it might have been neceſſary expreſsly to alledge the fact to have been committed within the bills of mortality.

As to the ſecond objection, he ſaid, "A ſale by auction is a known and cer-"tain term. But the witneſs goes fur-"ther, and ſtates it in ſuch a manner as "clearly ſhews it to be within the act."

The Court therefore unanimouſly confirmed the above conviction.

Exciſe. Glass.

City and County of Briſtol. } BE it remembered, that this day of in the 13th year of the reign of our ſovereign lord George the Third that now is, at the Council houſe in the city of Briſtol, John Barrett, of the ſaid city and county, gentleman, in his proper perſon, cometh before us R. G. mayor of the ſaid city, R. F. J. B. and E. W. four of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king, and alſo to hear, &c. in the ſaid city and county committed,

For not paying the exciſe duty on materials and metal for making flint glaſs, by which a forfeiture of double the value is incurred. See 19 G. 2. c. 12. ſ. 13. & 14.

* Vid. treatiſe, title **Information**. p. 50.

Information. committed, and giveth us the ſaid juſtices to underſtand and be informed, that at ſeveral times between the 3d day of May and the 21ſt day of June now laſt paſt, in the pariſh of T. in the city of Briſtol, R. C. R. R. and C. F. partners at a glaſs-houſe there, belonging to and uſed by them, did make uſe of thirty hundred three quarters and ſeventeen pounds weight of materials or metal for the making of white or flint glaſs; and that there did accrue and become due to his ſaid majeſty from the ſaid R. C. R. R. and C. F. for the duty of the ſaid materials and metal made into glaſs as aforeſaid, £14. 8*s*. 5*d*. of lawful, &c. which ſum ſo accrued, or any part thereof, the ſaid R. C. &c. &c. have not paid or cleared off, to or for the uſe of his ſaid majeſty, within ſix weeks next after they, according to the form of the ſtatute, did make or ought to have made their entry or entries of the ſaid materials and metal made into glaſs as aforeſaid, or any part thereof, or at any time ſince, but the ſame yet remains wholly due and unpaid, contrary to the form of the ſtatute, &c. whereby they have forfeited double the value of the ſaid duty remaining unpaid as aforeſaid, that is to ſay, £.28. 16*s*. 10*d*. of like lawful money. And thereupon the ſaid J. Barrett humbly prays judgment of us the ſaid juſtices in the premiſes, and that the

ſaid

ſaid R. C. &c. may be ſummoned to anſwer the ſaid premiſes, and to make defence thereto before us the ſaid juſtices. R. G. mayor, R. F. E. W. *J. Barret.*

Whereupon we the ſaid juſtices do accordingly iſſue out our ſummons to the ſaid R. C. R. R. and C. F. requiring them to appear before us at the Council-houſe aforeſaid, on the day of the ſame month of to anſwer to the ſaid premiſes, and to make defence thereto before us. Whereupon afterwards, to wit, on the day of in the 14th year, &c. at the Council-houſe in the city of B. aforeſaid, the ſaid R. C. after having been duly ſummoned in this behalf, appears, and is preſent before us the ſaid juſtices to anſwer to the ſaid premiſes, and to make defence thereto; but the ſaid R. R. and C. F. do not, nor doth either of them, appear before us to anſwer or make defence to the premiſes. Nevertheleſs R. W. of the city of B. aforeſaid, officer of exciſe, a credible witneſs in this behalf, on the day and in the place laſt mentioned, cometh before us the juſtices aforeſaid, and before us the ſame juſtices, upon his oath on the holy goſpel of God to him then and there adminiſtered by us the ſaid juſtices depoſeth and ſaith, in the preſence and hearing of the ſaid

Summons to defendants.

Appearance of one of defendants.

Proof of ſervice of the ſummons on one of the defendants who did not attend.

R. C. that on the day of in the year firſt aforeſaid, he the ſaid R. W. did perſonally ſerve the ſaid C. F. with our ſaid ſummons to appear here this ſame day of to anſwer the premiſes; and H. B. of the city of B. aforeſaid, officer of exciſe, another credible witneſs in this behalf, on the day and at the place firſt aforeſaid cometh before us the juſtices aforeſaid, and before us the ſame juſtices, &c. (affidavit of perſonal ſervice upon the other defendant ſtated as above*) to anſwer the premiſes. Whereupon the ſaid R. R. and the ſaid C. F. not appearing here before us in obedience to our ſaid ſummons, and the ſaid information having been heard by the ſaid R. C. he the ſaid R. C. is aſked by us the ſaid juſtices, if he can ſay any thing why the ſaid R. C. R. R. and C. F. ſhould not be convicted of the premiſes above charged upon them in form aforeſaid. And thereupon the ſaid R. C. ſaith, that they are not guilty of the premiſes charged upon them. And thereupon on the ſame laſt-mentioned day and year, at the place laſt aforeſaid, the ſaid R. W. a credible witneſs in this behalf, cometh before us the ſaid juſtices in his proper perſon, and on his corporal

Service of the other defendant who did not attend.

Plea of the one defendant who did attend—not guilty.

Evidence of the offence.

* The proof in both theſe inſtances is of *perſonal* ſervice; and query, whether a magiſtrate ought to accept of leſs; that being required in all common law proceedings, unleſs ſpecially diſpenſed with by the Courts.

ral oath upon the holy gospel of God now administered to him by us the said justices, he the said R. W. deposeth and saith in the presence and hearing of the said R. C. concerning the premises in the said information specified, that he the said R. W. being officer of excise, did (at such times) between the 3d day of May and the 21st day of June, in the said 13th year, &c. survey the materials or metals in the glass-house of the said R. C. &c. in the parish of T. in the said city and county of B. and that the said R. C. &c. during the last-mentioned times, did there make use of thirty hundred three quarters and seventeen pounds weight of materials or metal in the making of white or flint glass; and that there did accrue and become due to his said majesty from the said R. C. &c. for the duty of the said materials and metal made into glass as aforesaid, 14*l.* 8*s.* 5*d.* of lawful, &c. which sum so accrued, or any part thereof, the said R. C. &c. have not paid or cleared off to or for the use of his said majesty within six weeks next after they, according to the form of the statute, &c. did make or ought to have made their entry or entries of the said materials and metal made into glass as aforesaid, or any part thereof, or at any time since, but the same yet remains wholly due and unpaid. And thereupon, on the part and behalf of the said R. C. Defence.

R. R. and C. F. the ſaid R. C. being called upon by us to ſhew unto us ſufficient cauſe why they ſhould not be convicted of the premiſes, the ſaid R. C. alledges, that he the ſaid R. C. had on the day of laſt paſt *tendered and offered* to pay to the ſaid J. B. the informer aforeſaid, and collector of the ſaid duties, to wit, the ſaid ſum of 14*l.* 8*s.* 5*d.* within the time above by the ſaid act for the payment of the ſame limited and appointed, which the ſaid J. B. had wholly refuſed to accept of and from the ſaid R. C. Whereupon on the ſame day of in the ſaid 14th year, &c. at the Council-houſe aforeſaid, S. P. of the city of B. gentleman, a credible witneſs in this behalf, cometh before us the ſaid juſtices in his proper perſon, and on his corporal oath upon the holy goſpel of God now adminiſtered to him by us the ſaid juſtices, depoſeth and ſaith, in the preſence and hearing of the ſaid R. C. that he is clerk to the ſaid J. B. the collector of the ſaid duties, and that one J. P. in the preſence of the ſaid S. P. *did weigh twenty-ſix guineas which were offered in payment for the arrears of the ſaid duties, as the ſaid R. C. hath alledged, and that all and every of the ſaid twenty-ſix guineas were light and under the current weight of guineas then in that behalf by the lords commiſſioners of his majeſty's treaſury appointed to be uſed by the collectors*

Tender of arrears.

Evidence that the tender was in light guineas.

*collectors of excise**, to wit, under the weight of five pennyweights and three grains each guinea; and that the said R. C. although he received back the said money, did refuse to pay the arrears of 14*l.* 8*s.* 5*d.* of the duties aforesaid in any other or different money than in the said guineas so then under the current weight of guineas as aforesaid, although often applied to afterwards by the said collector. And thereupon also on the same day and year last above-mentioned, at the Council-house aforesaid, F. E. of the said city of B. banker, another credible witness in this behalf, cometh before us the said justices in his proper person, and on his corporal oath, &c. (as above) in the presence and hearing of the said R. C. that he is a partner with Messrs. bankers, in the said city of B. *and that the weight of guineas current there since the making of the said late act of parliament in that behalf has been at the rate of five pennyweights and three grains each guinea, and not under.* And also on the same day and year last above mentioned at the Council-house aforesaid, T. A. of the said city of B. gent. another credible witness in this behalf, cometh before us the said justices, &c. (as above) that he is a servant to certain bankers in S. street, in the said

Evidence what was the weight of guineas current at Bristol at the time.

* It should seem that the act giving them authority so to do should be here mentioned, as it is afterwards referred to.

county and city of B. called the *S. ſtreet* bank, and *that the weight of guineas current there ſince the making of the ſaid late act of parliament has been at the rate of five pennyweights and three grains each guinea, and not under.* And alſo on the ſame day and year laſt above mentioned, at the Council-houſe aforeſaid, J. P. of the ſaid city of B. gent. another credible witneſs in this behalf, cometh, &c. (as above) that he weighed *the ſaid twenty-ſix guineas* ſo as aforeſaid tendered to the ſaid J. B. collector of the duties above herein mentioned, *and that the ſame then and there were under the then current weight, to wit, under the weight of five penny-weights and three grains by each guinea*; and that one W. L. the clerk of the ſaid R. C. by whom the ſaid twenty-ſix guineas were tendered in payment for the duties aforeſaid, for and on the behalf of the ſaid R. C. R. R. and C. F. did not then and there requeſt the ſaid J. B. the ſaid collector, to cut the ſame or any of them, or to have the currency of the ſame determined by the mayor or any other magiſtrate, of the ſaid city and county of B. but the ſaid W. L. then and there aſſerted, that as he the ſaid W. L. had received the ſame for the ſaid R. C. as good guineas, and of due weight, he the ſaid R. C. was determined to paſs away the ſame as good guineas, and of due weight. And the ſaid

Evidence of the perſon who weighed the guineas tendered.

ſaid W. L. then and there received the ſame back, and would not pay any other money. Whereupon all and ſingular the premiſes being heard, and by the ſaid juſtices fully underſtood, and mature deliberation being thereupon had, and no other defence being made on behalf of the ſaid R. C. R. R. and C. F. It is conſidered by us the ſaid juſtices, that the ſaid R. C. R. R. and C. F. are guilty of the premiſes aforeſaid charged upon them in and by the ſaid information, and they are by us accordingly convicted thereof. And we the ſaid juſtices do award and adjudge, that the ſaid R. C. &c. have for their ſaid offence forfeited the ſum of 28*l.* 16*s.* 10*d.* of lawful, &c. being double the value of the ſaid duty, to be applied according to the form of the ſtatute, &c. In witneſs whereof we the ſaid juſtices to this record of conviction have ſet our hands and ſeals at the city and county of B. aforeſaid, the ſaid day of in the ſaid 14th year, &c. and in the year of our Lord 1771. Judgment.

R. G. mayor.
R. T.
J. B.
E. W.

Exciſe. Paper.

Conviction of a paper-maker for removing paper without giving notice to the proper officer.

DURHAM. Be it remembered, that upon the 11th day of June, in the 9th year of the reign of our ſovereign lord

2 W. & M. c 4. ſ. 42. 10 An. c. 19. ſ. 32. 12 An. ſt. 2. c. 9.

lord George the ſecond, by the grace of God of G. B. &c. at Sunderland, in the county palatine of Durham, before us R. R. eſq; and R. B. eſq. two of the juſtices of our ſaid lord the king (one of the quorum) aſſigned to keep the peace of our lord the king in and for the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed within the ſaid county, comes Rawſthorn Bradſhaw, of the pariſh of B. W. in the ſaid county palatine of D. gent. who, as well for our ſovereign lord the king as for himſelf, proſecutes in this part before us, and giveth us the ſaid juſtices to underſtand and be informed, that one D. O. of Gibſide Mill, in the pariſh of Whickham, in the ſaid county palatine of D. paper-maker, upon the 14th day of April laſt paſt, and long before, and ever ſince, at G. Mill aforeſaid, in the pariſh of W. aforeſaid, in the ſaid county palatine of D. was, hath been, and yet is, a maker of paper, charged, and chargeable with ſeveral rates and duties due and payable to our ſaid ſovereign lord the king by virtue of the ſtatute in ſuch caſe made and provided; and that the ſaid D. O. within three months now laſt paſt, that is to ſay, upon the ſaid 14th day of April, at G. Mill aforeſaid, in the pariſh of W. aforeſaid, in the ſaid county palatine of D. being then ſuch

Information.

maker

maker of paper as aforesaid, did remove, carry, and send away, and did suffer to be removed, carried, and sent away, several quantities or parcels of paper by him there made, that is to say, seventeen reams of paper, of which said seventeen reams of paper so removed, carried, and sent away, and so suffered to be removed, carried, and sent away as aforesaid, or of any part or parcel thereof, no account had been first taken by the proper officer duly appointed in that behalf to take an account of the same, from the warehouse or place where the said seventeen reams of paper had been first put after the said paper had been dried and fit for use. And that before the said removing, carrying, and sending away the said seventeen reams of paper as aforesaid, no notice whatsoever was or had been ever given to the proper officer in that behalf of the said D. O.'s intention to remove, carry, and send away the same, or of his intention to suffer the same to be removed, carried, and sent away; as by the statute in such case made and provided there ought to have been, that the said officer might have taken an account thereof, but that the said D. O. did wholly neglect and omit to give such notice, against the form of the said statute. And the said R. B. does further give the said justices to understand and be informed, that the said D. O. afterwards, to wit, upon the 15th day of April last past, at

Information for another quantity of paper.

G. Mill, in the pariſh of W. aforeſaid, in the ſaid county palatine of D. he the ſaid D. O. being then and there a maker of paper, charged and chargeable with ſuch duties as aforeſaid, did remove, carry, &c. (for twelve rheams in the ſame form as before) againſt the form of the ſtatute. And thereupon afterwards, that is to ſay, upon the 21ſt of the ſame month of June, in the 9th year aforeſaid, at 11 o'clock in the forenoon of the ſame day, at S. aforeſaid, in the county palatine of D. aforeſaid, to wit, at the dwelling-houſe of one T. L. being an inn and public-houſe, ſituate in S. aforeſaid, commonly called or known by the name or ſign of the Shoulder of Mutton, one T. M. of Smallwell, in the pariſh of W. and county palatine of D. aforeſaid, being a credible witneſs, in his proper perſon cometh before us the ſaid R. R. and R. B. eſqrs. two of the juſtices of our lord the king aſſigned to keep the peace of our ſaid lord the king in and for the ſaid county palatine of D. and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed within the ſaid county, in due manner taketh his corporal oath upon the holy evangeliſts, before us the ſaid juſtices, to ſpeak the truth touching and concerning the premiſes ſpecified in the ſaid information (we the ſaid juſtices having then and there ſufficient power

Evidence.

and

and authority to adminiſter the ſaid oath to the ſaid T. M. in that behalf) and the ſaid T. M. being ſworn as aforeſaid, then and there ſaith, depoſeth, and ſweareth, touching and concerning the premiſes in the ſaid information above ſpecified, that the ſaid D. O. of G. Mill aforeſaid, of the pariſh of W. aforeſaid, in the ſaid county palatine of D. paper-maker, for three months now laſt paſt, was, and during all that time continued to be, a maker of paper at G. Mill aforeſaid, and he the ſaid D. O. within three months now laſt paſt, that is to ſay, on the ſeveral and reſpective days herein-after mentioned, at G. M. aforeſaid, in the pariſh of W. aforeſaid, in the county palatine of D. aforeſaid, did remove, carry, and ſend away, and ſuffer to be removed, carried, and ſent away, ſeveral quantities and parcels of paper by him there made, that is to ſay, one parcel containing ſeventeen rheams, on the 14th day of April now laſt paſt, and another parcel of paper containing twelve rheams on the 15th day of the ſame month of April, of which ſaid ſeveral parcels of paper ſo removed, carried, and ſent away, and ſo ſuffered to be removed, carried, and ſent away as aforeſaid, or of either of them, or of any part of them, or of either of them, no account had been firſt taken by the proper officer duly appointed in that behalf to take an account of the

Notice not given to the officer of excise.

the ſame, from the warehouſe or place where the ſaid two ſeveral parcels of paper had been firſt put after its having been dried and fit for uſe. And that before the ſaid removing, carrying, and ſending away the ſaid two parcels as aforeſaid, no notice whatſoever was or had been ever given to the proper officer in that behalf of the ſaid D. O.'s intention to remove, carry, and ſend away, the ſame, or of his intention to ſuffer the ſame to be removed, carried, and ſent away, as by the ſtatute in ſuch caſe made and provided there ought to have been, but that the ſaid D. O. did wholly neglect and omit to give any ſuch notice againſt the form of the ſaid ſtatute.

Summons.

Whereupon the ſaid D. O. having been duly ſerved with a ſummons in that behalf, in order to appear and make his defence againſt the ſaid charges contained in the ſaid information upon the ſaid 21ſt day of June, in the 9th year aforeſaid, at S. aforeſaid, in the county

Appearance of defendant.

palatine of D. aforeſaid, at the dwelling-houſe of the ſaid T. L. being an inn and public houſe ſituate in S. aforeſaid, commonly called or known by the ſaid name or ſign of the Shoulder of Mutton, before us the ſaid R. R. and R. B. being then and there two of the juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in and for the ſaid county palatine of D. and

alſo

alſo to hear and determine, &c. (as before) appearing and being preſent, and the cauſe of the aforeſaid, in the ſaid information, and the information itſelf, and the evidence ſo given thereupon as aforeſaid, being then and there heard and fully underſtood by him the ſaid D. O. he the ſaid D. O. is aſked by us the ſaid juſtices, if he hath or knoweth of any thing to ſay for himſelf why he the ſaid D. O. ought not to be convicted of the premiſes above charged upon him as aforeſaid. And all and ſingular the matters alledged by him the ſaid D. O. in his defence, touching and concerning the premiſes aforeſaid, being heard and fully underſtood by us the ſaid juſtices, becauſe it manifeſtly appears to us the ſaid juſtices, that the ſaid D. O. is guilty of the premiſes aforeſaid in the ſaid information above ſpecified and charged upon him in manner and form as in the ſaid information is above charged; it is therefore conſidered by us the juſtices aforeſaid, that ſaid D. O. by and upon the teſtimony of the ſaid T. M. being a credible witneſs as aforeſaid, upon his ſaid oath ſo taken before the ſaid juſtices as aforeſaid, be and he is hereby convicted of the premiſes in the ſaid information above ſpecified and charged upon him as aforeſaid, according to the form of the ſaid ſtatute in that caſe made and provided. And that the ſaid D. O. do forfeit and loſe

Judgment.

Forfeitures.

loſe the ſeveral ſums of 20*l.* and 20*l.* of lawful money of Great Britain, that is to ſay, the ſum of 20l. of lawful money, &c. for the offence committed by him the ſaid D. O. upon the ſaid 14th day of April as aforeſaid, and alſo the further ſum of 20*l.* of like lawful money, for the offence committed by him the ſaid D. O. upon the ſaid 15th day of April as aforeſaid, amounting in the whole to the ſum of 40*l.* of like lawful money. Which ſaid ſum of 40l. we the ſaid juſtices do mitigate, leſſen, and reduce to the ſum of 10*l.* according to the form and effect of the ſaid ſtatute. In teſtimony whereof we the ſaid juſtices have ſet our reſpective hands and ſeals to this record, at S. aforeſaid, in the county palatine of D. aforeſaid (to wit) at the ſaid dwelling-houſe of him the ſaid T. L. being an inn or public houſe, ſituate in S. aforeſaid, commonly called or known by the name or ſign of the Shoulder of Mutton as aforeſaid, on the ſaid 21ſt day of June, in the 9th year aforeſaid.

Mitigation of them.

R. R. (L. S.)
R. B. (L. S.)

Order of the Quarter Seſſions on an appeal from the above conviction ſetting it aſide.

DURHAM, to wit. At the general quarter ſeſſions of the peace held at the city of Durham, in and for the county of Durham, on Wedneſday the 16th day of July, in the 9th year of the reign of our ſovereign lord George the Second, by the Grace of God, &c. before

T. H.

T. H. esq. G. B. esq. &c. and others their associates, justices of our said sovereign lord the king assigned to keep the peace in the said county, and to hear and determine divers felonies, trespasses, and other misdemeanors done and committed within the same county. Whereas D. O. of Gibside, in this county, paper-maker, hath appealed to his majesty's justices of the peace at their general quarter sessions of the peace assembled, from a judgment or sentence given against him by R. R. esq; and R. B. esq. two of his majesty's justices of the peace for the said county, for the penalty or forfeiture of 10*l.* alledged to be incurred by the said D. O. for and by reason of his removing and carrying away paper before the same was first taken an account of by the proper officer, contrary to the statute in that case made and provided. And after hearing the said appeal and examinations of several witnesses, it is thought fit and accordingly so ordered by the right worshipful his majesty's justices of the peace at this general quarter sessions of the peace assembled (being the next general quarter sessions of the peace after such judgment or sentence given) *that the said appeal be allowed*, and the judgment or sentence so given by the said R. R. and R. B. against the said D. O. as aforesaid, be

set

ſet aſide and reverſed, and the penalty diſcharged.

By the Court,

J. M. *Deputy Clerk of the Peace.*

N. B. this reverſal muſt have been upon the merits, as that is the proper ſubject of an appeal to ſeſſions.

Fiſheries.

Rex v. Green.

Conviction on 5 G. III. c. 14. for attempting to take fiſh in a river without the conſent of the owner.

SOUTHAMPTON, to wit. Be it remembered, that on the 3d day of September, in the 23d year of the reign of our ſovereign lord George the Third, by the grace of God, &c. and in the year of our lord 1783, at new Alresford, in the county of Southampton, James Morley, of the pariſh of Ovington, in the ſaid county, labourer, a credible witneſs, and Sir Henry Tichborne, of Tichborne in ſaid county, bart. came in their proper perſons before us Thomas Baker and William Harris, eſqrs. two of the juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and reſiding near to the place where the offence herein after mentioned was committed; and the ſaid

John

John Morley on his corporal oath then and there gave us the ſaid juſtices to underſtand and be informed, that on Tueſday the 12th day of Auguſt laſt paſt, about ſeven o'clock in the evening, he the ſaid J. M. ſaw Harry Green, of the pariſh of New Alresford, gent. in the pariſh of Ovington aforeſaid, in the county aforeſaid, attempt to take, kill, and deſtroy fiſh with a fiſhing rod and a fiſhing line, in that part of a certain river in Ovington aforeſaid, in the county aforeſaid, which runneth between the manors of Ovington and Old Alresford, in the ſaid county, *without the conſent of the ſaid Sir H. Tichborne, the owner of the ſaid part of the ſaid river*, the ſaid part of the ſaid river being then private property, and not being in any park or paddock, or in any garden, orchard, or yard adjoining or belonging to any dwelling-houſe, but being in other incloſed ground which then was private property, contrary to the form of the ſtatute made in the 5th year of his ſaid majeſty king George the third, intitled "An act for the more effectual preſervation of fiſh in fiſh-ponds and other waters, and conies in warrens, and for preventing the damage done to ſea banks within the county of Lincoln, by breeding conies therein," he the ſaid H. Green not then having any juſt right to take, kill, or carry away, or

Information on oath required by the ſtatute.

or to attempt to take, kill, or carry away any ſuch fiſh*. And further, that he the ſaid J. Morley knew that the ſaid Harry Green had not the conſent of the ſaid Sir H. Tichborne to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, becauſe he the ſaid J. Morley, by the order of Sir H. Tichborne ſome ſhort time before the ſaid Harry Green ſo as aforeſaid attempted to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, did give notice to the ſaid H. Green, that he ſhould not fiſh in the ſaid part of the ſaid river, and that he the ſaid J. Morley knew that the ſaid Sir H. Tichborne was the true and lawful owner of the ſaid part of the ſaid river, becauſe he the ſaid J. Morley, for ſeveral years before the ſaid H. Green ſo as aforeſaid attempted to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, † *rented the fiſhery of the ſaid part of the ſaid river of the ſaid Sir H. Tichborne*; and becauſe at the time when the ſaid H. Green ſo as aforeſaid attempted

* Here it ſhould ſeem the two judges who were againſt the conviction thought the charge (or information) ended and the evidence begun.

† The paſſages here in Italics, and referred to, are the only ones that imply that Sir H. T. was owner of the *fiſhery*; and even in theſe paſſages it is (as was obſerved by the judges) only *argument*, and not evidence. Vid. R. v. Corden, Burr. treatiſe, p. 17. that this, or proof of his diſſent is neceſſary.

tempted to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, he the ſaid J. Morley * *was employed by the ſaid Sir H. Tichborne to take care of the fiſhery* of the ſaid part of the ſaid river, he the ſaid Sir H. Tichborne having then * *and for ſome time before taken the ſaid fiſhery* of the ſaid part of the ſaid river into his own hands. And the ſaid Sir H. Tichborne on his corporal oath complained unto us the ſaid juſtices, and gave us to underſtand, that before and at the time when the ſaid H. Green attempted to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, in ſuch manner as is hereinbefore ſet forth by the ſaid J. Morley, he the ſaid Sir H. Tichborne was the true and lawful owner of the ſaid part of the ſaid river, and that the ſaid H. Green never had the conſent of the ſaid Sir H. Tichborne to take, kill, or deſtroy, or to attempt to take, kill, or deſtroy any fiſh in the ſaid part of the ſaid river, and therefore the ſaid Sir H. Tichborne prayed that upon the aforeſaid information of the ſaid J. Morley, and upon the complaint of him the ſaid Sir H. Tichborne, the ſaid H. Green might be convicted in the penalty of 5*l.* according to the form of the ſtatute aforeſaid. Whereupon afterwards, to wit, upon the 9th day of September,

Complaint of the owner.

* See note † preceding page.

Appearance of defendant in conſequence of a warrant.

September, in the year aforeſaid, he the ſaid Harry Green appearing before us the ſaid juſtices, in purſuance of our warrant, at New Alresford aforeſaid, in the county aforeſaid, to make his defence againſt the ſaid charge contained in the ſaid information, and *having heard the ſame read*, and the ſaid J. Morley alſo now appearing before us the ſaid juſtices, and *having been now again ſworn* before us the ſaid juſtices to the truth of his ſaid information, in the preſence of the ſaid H. Green †, and the ſaid J. Morley having now upon his oath declared, that at the time when the ſaid H. Green ſo as aforeſaid attempted to take, kill, and deſtroy fiſh in the ſaid part of the ſaid river, the ſaid Sir H. T. was the true and lawful owner of the ſaid part of the ſaid river, and that the *ſaid part of the ſaid river* then was the private property of the ſaid Sir H. T. And the ſaid Harry Green having now in the preſence of us the ſaid juſtices aſked the ſaid J. Morley, and alſo the ſaid Sir H. T. (who now alſo appears before us) ſuch queſtions as he the ſaid H. Green thought proper, he the ſaid H. Green is aſked by us the ſaid juſtices, if he can ſay any thing for himſelf why he ſhould not be convicted of the offence charged upon

Defendant being aſked, does not ſay any thing in his defence.

† The information being upon oath, and that oath reſworn in the defendant's preſence, query, whether any further evidence was neceſſary.

upon him in form aforeſaid. And becauſe the ſaid H. Green doth not, nor can ſay any thing in his own defence touching or concerning the offence ſo charged upon him as aforeſaid, and becauſe all and ſingular the premiſes being fully heard and underſtood by us the ſaid juſtices, it manifeſtly appears to us, that the ſaid H. Green is guilty *of the above-mentioned offence* laid to his charge as aforeſaid; and becauſe the ſaid Sir H. T. hath now prayed that the ſaid H. Green may be convicted of the ſaid offence laid to his charge as aforeſaid. It Judgment.
is therefore by us the ſaid juſtices, upon the aforeſaid information and evidence of the ſaid J. Morley, and upon the complaint of the ſaid Sir H. T. that the ſaid H. Green had not the conſent of the ſaid Sir H. T. to take, kill, or deſtroy fiſh, or to attempt to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river (without any regard being paid by us the ſaid juſtices to the evidence of the ſaid Sir H. T. that the ſaid part of the ſaid river was his private property) adjudged that the ſaid H. Green *is guilty of the aforeſaid offence*, and that he the ſaid H. Green be and he is hereby convicted of the ſaid offence, according to the ſtatute aforeſaid. And we the ſaid juſ- Forfeiture.
tices do award and adjudge, that for the offence aforeſaid, he the ſaid H. Green hath forfeited the ſum of 5*l.* of lawful money

money of Great Britain, to be paid, as the ſtatute doth direct, to us the ſaid juſtices, for the uſe of the ſaid Sir H. T. *as owner of the ſaid part of the ſaid river* where the ſaid offence was committed, &c.

The above conviction having been removed into the King's Bench by certiorari, Mr. Lawrence moved to quaſh it upon three objections:

Firſt, It does not appear in evidence that Sir H. T. was owner of the *fiſhery* of that part of the river. He is only ſaid to be owner of *the ſaid part of the ſaid river*. Now a man may have the *ſoil* of a river, and yet not the *fiſhery* †.

Secondly, It is not ſufficiently ſtated *where* the offence was committed. Some certain place ſhould have been named, that it may appear not to have been the defendant's own land. (This objection, however, was not much relied on.)

Third objection, The penalty is adjudged to Sir H. Titchborne as owner of the *river*, not as owner of the *fiſhery*.

Mr.

† Salk. 937. was cited, where fiſheries are diſtinguiſhed into three ſorts, ſeparalis piſcaria, where the owner of the ſoil is likewiſe owner of the fiſhery; libra piſcaria, where a man has the right to the *fiſh*, but not to the ſoil; and communis piſcaria, which is like any other right of common.

Mr. Morris in ſupport of the conviction, inſiſted that this offence ſufficiently appears to be a gravamen to this owner of the fiſhery, and is ſubſtantially averred to be ſo. The whole of the evidence is *charge*; and by that evidence it appears that Sir H. T. was owner not only of the *river*, but of the *fiſhery*.

As to the laſt objection, he held it to be ſufficient that Sir H. T. had been before proved to be owner of the fiſhery.

The firſt objection ſeemed to have moſt weight with the court. Upon that they were equally divided in opinion. Lord Mansfield and Mr. Juſtice Buller were of opinion, that as the act requires a complaint upon oath, the whole of the evidence was charge; and that the whole of the evidence contained a ſufficient allegation that Sir H. Tichborne was owner of the *fiſhery*.

Mr. J. Willes and Mr. J. Aſhurſt inclined to think the conviction bad; for it ſeemed to them that the whole evidence was not charge, but that the charge ended with the words *contrary to the form of the ſtatute, &c.*

They alſo obſerved, that what the witneſs ſwears of his having "rented the "fiſhery," is only put argumentatively, to prove Sir H. T. to be owner of the *river*, not of the *fiſhery*; but that it ought to have been a poſitive allegation.

Nothing

Nothing further appears to have been done upon this conviction. The point therefore upon which the judges differed muſt be conſidered as undecided.—But (if under ſuch circumſtances it were proper to hazard an opinion) one ſhould incline to think, that when an information upon oath has been given under this act of Parliament, and the whole of it is reſworn (in the defendant's preſence) in order to be made evidence, there is no ſeparating it, and ſaying that a part is to be conſidered as evidence only, and a part as charge or information. But on the other hand, one can hardly think the Court would (on mature deliberation) deem ſuch an argumentative inference as here appears of Sir H. T. being owner of the fiſhery, as ſufficiently poſitive, either in the information or the evidence.

The above precedent may, however, be uſeful to magiſtrates on proſecutions before them under this act of parliament, provided they avoid this objection, by requiring poſitive proof who is owner of the *fiſhery*, and ſtating it in direct terms.

Game.

Conviction for keeping greyhounds and courſing hares, not being a qualified perſon.

WILTSHIRE, to wit. Be it remembered, that on the 25th day of September, in the 9th year of the reign

reign of his majeſty king George the Third, of Great Britain, &c. at Enford, in the county of Wilts, Thomas Butt, of Everly in the ſaid county of Wilts, yeoman, in his proper perſon cometh before us W. Beach, Edw. Poore, and John Poore, eſqrs. three of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county of Wilts, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors done and committed in the ſaid county of Wilts, and now here giveth us the ſaid juſtices to underſtand, that one Thomas Chandler, of the pariſh of Uphaven, in the county of Wilts aforeſaid, huſbandman, within three months now laſt paſt, to wit, on the 22d day of September, in the 9th year of the reign of our ſaid ſovereign lord the king that now is, the ſaid T. C. not having then lands or tenements, or any other eſtate of inheritance of the clear yearly value of 100*l.* or for the term of life, nor any leaſe or leaſes for ninety-nine years or any longer term of the clear yearly value of 150*l.* nor then being the ſon and heir apparent of an eſq: or * other perſon of higher degree, † *nor then being the lord*

Information.

H *of*

* Here the word "of" is not inſerted, as it is Burn's precedent. Vid. Jones v. Smart, 1 Term. Rep.

† This being only a conſtructive qualification, it has been held not neceſſary to negative it. R. v. Pickles, Mich. 19 G. II. cited in R. v. Jarvis, 1 Burr. 150. Vid. treatiſe, title Information.

of any manor or royalty, nor then being the owner or keeper of any foreſt, park, chaſe, or warren, * *nor then being gamekeeper of any lord or lady of any lordſhip or manor, nor then being truly and properly a ſervant of or to any lord or lady of any lordſhip or manor, nor then being immediately employed and appointed to take and kill the game for the ſole uſe and immediate benefit of ſuch lord or lady*, nor being in any other manner qualified, empowered, licenſed, or authorized by the laws of this realm, either to take, kill, or deſtroy any ſort of game whatſoever, or to keep or uſe any greyhounds for that purpoſe, did, at the pariſh of Uphaven, in the county of Wilts aforeſaid, keep and uſe † three dogs called greyhounds, to kill and deſtroy the game, againſt the form of the ſtatute in ſuch caſe made and provided. Whereupon the ſaid T. C. afterwards, to wit, on the 26th day of September, in the 9th year aforeſaid, at Uphaven aforeſaid, had notice of the ſaid information, and of the offence therein charged upon him as aforeſaid, and was then and there by us the ſaid juſtices in due manner

Summons.

* See note † preceding page.

† R. v. Hartley, Cald. Rep. part II. p. 175. This deſcription of a greyhound held ſufficient. Vid. treatiſe, title **Evidence**.

manner ſummoned to appear before us the ſaid juſtices, at E. aforeſaid in the county of Wilts aforeſaid, on the 2d day of October, in the 9th year aforeſaid, to make his defence againſt the ſaid charge contained in the information aforeſaid. And thereupon afterwards, that is to ſay, on the ſaid 2d day of October, in the 9th year of the reign of our ſaid ſovereign lord the king, at E. in the county of Wilts aforeſaid, he the ſaid T. C. being duly ſummoned as aforeſaid in this behalf, before us the juſtices aforeſaid, appeareth and is preſent in order to make his defence againſt the ſaid charge contained in the ſaid information; and having heard the ſame, he the ſaid T. C. is aſked by us the ſaid juſtices if he can ſay any thing for himſelf why he the ſaid T. C. ſhould not be convicted of the premiſes above charged upon him in form aforeſaid, who pleadeth and ſaith, that he admits he was not qualified to kill game, and that he was out on a piece of down in the ſaid pariſh of Uphaven, on the ſaid 22d day, with three greyhound dogs, and one ſpaniel dog, but that all the ſaid dogs were not his property; but does not ſhew to us the ſaid juſtices any ſufficient cauſe why he ſhould not be convicted of the offence in the ſaid information above contained againſt him.

Appearance of defendant.

Plea of defence.

Evidence of the fact.

* And further at the ſame time and place, to wit, on the 2d day of October, in the year aforeſaid, within the ſaid county, one credible witneſs, to wit, Levi Woodham, of the pariſh of Everly, in the county of Wilts, huſbandman, cometh before us the juſtices aforeſaid, and before us the ſame juſtices, in the preſence of the ſaid T. C. upon his oath on the holy goſpel of God, to him then and there by us the juſtices aforeſaid adminiſtered (we the ſaid juſtices being duly authorized and empowered to adminiſter the ſaid oath to the ſaid L. W. in this behalf) depoſeth, ſweareth, and on his oath affirmeth and ſaith, in the preſence and hearing of the ſaid T. C. that the ſaid T. C. on the 22d day of September aforeſaid, in the year aforeſaid, at the pariſh of Uphaven aforeſaid, in the county aforeſaid, *did keep and uſe three greyhounds to kill and deſtroy the game, and that he then and there ſaw the ſaid T. C. walking acroſs the ſaid piece of down, the ſame being a place where hares uſually lie, with the ſaid three greyhound dogs and one ſpaniel dog, with a pole*

* Here though the defence itſelf ſeems to contain a confeſſion of the fact of *uſing*, &c. (that being the offence chiefly relied on) particular evidence of it is ſtated.

pole or ſtick in his hand. * And the ſaid T. C. then, to wit, on the 22d day of September aforeſaid, had not any lands or tenements, &c. (negativing all the qualifications exactly as in the information) nor in any other manner qualified, empowered, licenſed, or authorized by the laws of this realm, to take, kill, or deſtroy any ſort of game, or to keep or uſe any greyhounds for that purpoſe. Whereupon, and upon hearing and duly examining the whole matter aforeſaid, it manifeſtly appears to us the ſaid juſtices, that the ſaid T. C. was not on the 22d day of September aforeſaid, in any manner qualified, empowered, licenſed, or authorized, by or according to the laws of this realm, to keep or uſe any greyhounds to kill and deſtroy the game, and that the ſaid T. C. is guilty of the premiſes above charged upon him, in and by the information aforeſaid. Therefore the ſaid T. C. on the ſaid 2d day of October, in the year aforeſaid, at E. aforeſaid, in the county aforeſaid, before us the juſtices aforeſaid, by the teſtimony of the ſaid L. W. a credible witneſs as aforeſaid, according to the form of the ſtatute aforeſaid, is convicted of the offence aforeſaid, and hath forfeited the ſum of

Judgment.

* Query, if this be neceſſary? and vid. R. v. Crowther, 1 Term. Rep. 175. and treatiſe, title Evidence, p. 80.

5*l.* of lawful money of G. B. to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof we the ſaid juſtices aforeſaid, to this preſent record of conviction have ſet our hands and ſeals, at E. aforeſaid, in the county aforeſaid, the ſaid 2d day of October, in the 9th year of the reign of our lord the king that now is.

(Settled by Mr. Dunning.)

Land Tax.

Conviction for not ſerving the office of aſſeſſor of the land tax.

Hundred of Bampton, in the county of Oxford. } BE it remembered, that at the meeting of us A. B. C. D. and E. F. named and appointed commiſſioners in an act of parliament made and paſſed in the 15th year of his majeſty's reign, intituled, "An act for granting an aid "to his majeſty, by a Land Tax to be "raiſed in Great Britain, for the ſervice "of the year 1775," for putting in execution the ſaid act, and acting as ſuch commiſſioners in and for the hundred of Bampton, in the county of Oxford, held on the day of in the 15th year of his preſent majeſty's reign, at the George Inn, in Burford, within the hundred of Bampton, the ſame place being the moſt uſual and common place of our meeting within the hundred of Bampton, we the ſaid commiſſioners directed

rected our joint precept, bearing date the ſame day and year aforeſaid, to John Doe, yeoman, then an inhabitant of the hamlet or liberty of Holwell, within the ſaid hundred of B. whom we the ſaid commiſſioners in our diſcretion thought moſt convenient to be one of the aſſeſſors of all and every the rates and ſums of money impoſed on the ſaid hamlet and liberty of Holwell, by virtue of the ſaid act, requiring him to appear before us, commiſſioners as aforeſaid, at the George Inn, at Burford aforeſaid, within the ſaid hundred of B. on the day of then next enſuing, the ſame day not exceeding eight days after the date of our ſaid precept, according to the ſaid act. And the ſaid J. Doe thereupon appeared before us the ſaid commiſſioners, at the George Inn, in Burford aforeſaid, within the ſaid hundred of B. on the ſaid day of and at ſuch his appearance, we the ſaid commiſſioners then preſent, then and there cauſed to be read to the ſaid J. D. the rates, duties, and charges impoſed upon the ſaid Hamlet or liberty of Holwell, within the ſaid hundred of B. by virtue of the ſaid act, and openly declared the effect of our charge to him, and how and in what manner he ſhould and ought to make his ſaid aſſeſſments, and how he ought to proceed in the execution of the

ſaid act, according to the true intent and meaning of the ſame, and after ſuch our charge given to the ſaid J. D. we the ſaid commiſſioners, on the ſaid day of at Burford aforeſaid, within the ſaid hundred of B. iſſued our warrant bearing date the day of in the year aforeſaid, and directed the ſame to the ſaid J. D. then being one of the moſt able and ſufficient inhabitants of the ſaid hamlet or liberty of H. within the ſaid hundred of B. and alſo to one other of the moſt able and ſufficient inhabitants of the ſaid hamlet or liberty of H. within the ſaid hundred of B. requiring them to be aſſeſſors of all and every the rates and ſums of money impoſed on the ſaid hamlet or liberty of H. within the ſaid hundred of B. by virtue of the ſaid act, and alſo therein appointed and prefixed the day of in the year aforeſaid, and the Bull Inn, at Burford aforeſaid, within the ſaid hundred of B. to be the day and place for him the ſaid J. D. and the ſaid aſſeſſors aforeſaid, to appear before us the ſaid commiſſioners, and to bring in their aſſeſſments of ſuch rates and ſums of money in writing; and we the ſaid commiſſioners being now duly met and aſſembled together, by virtue of the ſaid act, on this preſent ſaid day of in the year aforeſaid, at the Bull Inn,

at

at Burford aforeſaid, being the time and place appointed and prefixed, and by our ſaid warrant aforeſaid, the ſaid J. D. being ſo as aforeſaid appointed aſſeſſor, makes default in his appearance, and neglects to appear before us here at the time ſo appointed by our ſaid warrant for his appearance as aforeſaid, not having lawful excuſe made out to us by the oaths of two credible witneſſes, according to the ſaid act. And thereupon, at this preſent meeting ſo holden by and before us the ſaid commiſſioners, on the day of in the year aforeſaid, at the Bull Inn, at Burford aforeſaid, within the ſaid hundred of B. R. R. of a credible witneſs, cometh before us the ſaid commiſſioners, and upon his oath on the holy goſpel of God to him duly adminiſtered by us, depoſeth and ſaith, that he the ſaid R. R. on the day of in the year aforeſaid, delivered our ſaid warrant to the ſaid J. D. By reaſon whereof, and by force of the ſaid act, the ſaid J. D. for his ſaid default hath forfeited and loſt to his majeſty ſuch ſum as we the ſaid commiſſioners now preſent ſhall think fit, not exceeding the ſum of 40*l.* to be levied as in and by the ſaid act is directed.—Wherefore day is given by us the ſaid commiſſioners here preſent to the ſaid J. D. to appear before us the day of in the year aforeſaid, at to

ſhew cauſe, if any he hath, why he ſhould not be fined by us the ſaid commiſſioners or the major part of us, for his ſaid offence, in ſuch ſum, not exceeding the ſum of 40*l.* as we the ſaid commiſſioners, or the major part of us, ſhall think fit, according to the directions of the ſaid act. And now at this day, that is to ſay, on the day of in the year aforeſaid, at aforeſaid, being the time and place appointed for the ſaid J. D. to anſwer for his ſaid offence as aforeſaid, the ſaid J. D. having been duly ſummoned in this behalf, before us A. B. C. D. and E. F. we being now here met by virtue of the ſaid ſtatute, and the ſaid J. D. being now informed by us of the ſaid charge, and having heard the ſaid evidence of the ſaid R. R. admits that our ſaid warrant was delivered to him the ſaid J. D. by the ſaid R. R. as he the ſaid R. R. hath depoſed; and being aſked by us the ſaid commiſſioners here preſent, what he had to ſay why we the ſaid commiſſioners ſhould not fine him according to the directions of the ſaid act, does not make out to us, by the oaths of two credible witneſſes, any lawful reaſonable excuſe for not appearing before us, according to the tenor of our ſaid warrant. Whereupon it manifeſtly appears to us the ſaid commiſſioners here preſent, that the ſaid J. D. is

Defendant appears to anſwer for his offence.

Is aſked what he has to ſay.

Does not make out any excuſe by proof.

Therefore they adjudge him guilty, and convict him.

is guilty of the ſaid offence. Therefore it is conſidered by us the ſaid commiſſioners here preſent, and we do think fit and adjudge, that the ſaid J. D. for his default do forfeit and loſe to his majeſty the ſum of 5*l.* to be levied as by the ſaid act is directed, according to the form of the ſtatute in that caſe made and provided. In witneſs whereof, we the ſaid A. B. C. D. and E. F. commiſſioners as aforeſaid, have ſet our hands and ſeals to this record of the conviction aforeſaid, at B. aforeſaid, within the hundred of B. this day of in the year aforeſaid, &c. Forfeiture.

A gentleman then of great eminence at the bar, and a ſpecial Pleader, by whom the above was drawn, ſubjoined to it the following obſervations:——

"It is impoſſible to ſettle any form of "conviction which may do for all caſes; "but ſuppoſing all the facts to happen as "above ſtated, I think this will be the "proper form of conviction; for I would "not adviſe the commiſſioners to con-"vict without giving the defendant an "opportunity of proving his excuſe, if "he has any. If the defendant does not "appear in purſuance of the ſummons, "the conviction muſt be altered, and it "ſhould be ſtated, that the perſon "who ſerved the ſummons was ſworn,

"and

" and proved the ſervice; and the perſon " who ſerved the warrant ſhould in that " caſe, or in caſe the defendant appears, " and does not admit being ſerved with " the warrant, be again examined upon " oath, and his evidence ſet out again."

N. B. The above conviction, not being upon any *proſecution* under a penal ſtatute, but for the offence of diſobeying the Court itſelf who convicts, cannot (from its peculiar nature) require an information or complaint. But all the other ſteps are regularly and carefully ſtated; and the precedent may be very uſeful whenever (as may often happen) a ſimilar caſe occurs.

Warrant to levy the fine impoſed by the above conviction.

Hundred of Bampton, in the County of Oxford. } TO E. W. and G. H. Collectors, &c.

WHEREAS J. D. of the hamlet of H. within the hundred of B. in the county of Oxford, yeoman, at a meeting of us A. B. C. D. and E. F. named and appointed commiſſioners in an act of parliament made and paſſed in the 15th year of his majeſty's reign, intituled " An act for " granting an aid to his majeſty, " by a Land Tax to be raiſed in " Great Britain, for the ſervice of " the year 1775," for putting in exe-

" cution

cution the ſaid act, acting as ſuch commiſſioners in and for the hundred of B. in the county of Oxford, held on the day of in the 15th year of his majeſty's reign, at the George Inn, at Burford, within the ſaid hundred of B. is duly convicted by us the ſaid commiſſioners, for that we the ſaid commiſſioners iſſued out our warrant bearing date the day of in the year aforeſaid, and directed the ſame to the ſaid J. D. then one of the moſt able and ſufficient inhabitants of the ſaid hamlet or liberty of H. in the ſaid hundred of B. requiring him to be one of the aſſeſſors of all and every the rates and ſums impoſed on the ſaid hamlet or liberty of H. within the ſaid hundred of B. by virtue of the ſaid act, and alſo appointing and prefixing the day of in the year aforeſaid, and the Bull Inn, at Burford aforeſaid, within the ſaid hundred of B. to be the day and place for him the ſaid J. D. aſſeſſor as aforeſaid, to appear before us the ſaid commiſſioners, and to bring in his aſſeſſments of ſuch rates and ſums of money in writing. Yet the ſaid J. D. made default in his appearance, and neglected to appear before us at the time ſo appointed for his appearance by our aforeſaid warrant, not having lawful excuſe made out by the oath of two credible witneſſes, according to the ſaid act, by reaſon

reaſon whereof, and by force of the ſaid act, the ſaid J. D. for his ſaid default, forfeited and loſt to his majeſty ſuch ſum as we the ſaid commiſſioners preſent at the ſaid meeting, or the major part of us, ſhould think fit, not exceeding the ſum of 40*l.* to be levied as in and by the ſaid act is directed. Whereupon we the ſaid commiſſioners preſent at that meeting aforeſaid, thought fit and adjudged, that the ſaid J. D. for his ſaid default, ſhould forfeit and loſe to his majeſty the ſum of 5*l.* to be levied as by the ſaid act is directed, as by the record of the ſaid conviction under our hands and ſeals (relation being thereunto had) more fully appears. Theſe are therefore in his majeſty's name to authorize and require you the ſaid collectors, or either of you, to demand the ſaid ſum of 5*l.* of the ſaid J. D. if he can be found, or elſe to demand the ſame at the laſt place of abode of him the ſaid J. D. and in caſe he ſhall not pay the ſum upon demand, there to levy the ſaid 5*l.* upon the goods and chattels of the ſaid J. D. by diſtreſs and ſale thereof; and the ſaid goods and chattels ſo taken by diſtreſs, to keep by the ſpace of four days, at the coſt and charges of the ſaid J. D.; and if the ſaid J. D. do not pay the ſum of 5*l.* the money ſo diſtrained for, within the ſaid ſpace of four days, that you then cauſe the

the ſaid diſtreſs to be appraiſed by two or more of the inhabitants where the ſame ſhall be taken, or other ſufficient perſons, and to be ſold for the payment of the ſaid 5*l.*; and the overplus coming by ſuch ſale (if any be) over and above the ſaid 5*l.* and the charges of taking, keeping, and ſelling the ſaid diſtreſs, you return to the ſaid J. D. and that out of the money ariſing from ſuch diſtreſs and ſale of the goods and chattels of the ſaid J. D. you do pay the ſaid 5*l.* to his majeſty's receiver-general of the land tax for the county of Oxford, or to his lawful deputy, for the uſe of his majeſty, as the ſaid act directs, and certify to us what you ſhall have done in the premiſes, at on the day of next, as you ſhall anſwer the contrary at your perils. Given under our hands and ſeals the day of in the year aforeſaid. (Drawn by the ſame Gentleman as the Conviction).

Lottery.

WILTS, (to wit) Be it remembered that on the day of in the year of the reign of our preſent ſovereign lord George the Third, by the grace of God, &c. at in the county of Wilts aforeſaid, P. Eyles of in the county aforeſaid, maſon, in his own proper perſon, as well for

Againſt a mountebank doctor for expoſing plate to ſale by a lottery, contrary to 12 G. II. c. 28.

for the poor of the pariſh of aforeſaid in the county aforeſaid, where the offence hereinafter mentioned was committed, as for himſelf, exhibited unto me J. M. eſq. one of the juſtices of our ſaid preſent ſovereign lord the king aſſigned to keep the peace, &c. in and for the ſaid county, and alſo to hear and determine, &c. within the ſaid county, a complaint and information, and thereby informeth me the ſaid juſtice, that J. Lang of aforeſaid, in the county aforeſaid, practitioner in phyſic, did, after the 24th day of June, 1739, to wit, on the day of laſt paſt, at aforeſaid, in the county aforeſaid, *expoſe to ſale plate, to wit, a ſilver bowl and ſix ſilver ſpoons, by a method depending upon and to be determined by a lot or drawing by a device of chance*, againſt the form of the ſtatute, &c. whereby the ſaid J. L. hath forfeited the ſum of 200l of lawful money, &c. And thereupon the ſaid P. E. prays judgment in the premiſſes, and that he may have one third of the forfeiture, according to the form of the ſtatute, and that the ſaid J. Lang may be ſummoned to anſwer the ſaid premiſes, and to make defence therein before me the ſaid juſtice. And afterwards, to wit, on the day of aforeſaid, in the ſaid year of the reign, &c. at aforeſaid, in the county

Information.

county aforeſaid, being the time and place appointed by my ſummons on the above written information, the ſaid J. Lang being ſummoned appeareth, and pleadeth that he is not guilty of the offence, in manner and form as in the above written information is mentioned and ſet forth. Nevertheleſs, on the ſaid day of aforeſaid, in the year aforeſaid, at aforeſaid, in the county aforeſaid, one credible witneſs, to wit, A. B. of in the county aforeſaid, ſpinſter, cometh before me the ſaid juſtice, and before me the ſame juſtice, upon her oath by me the ſame juſtice then and there adminiſtered in the preſence of the ſaid J. Lang, depoſeth, ſweareth, and ſaith, that on the ſaid day of laſt paſt, at aforeſaid, in the county aforeſaid, the ſaid J. Lang did exhibit and expoſe to ſale on a ſtage ſet and placed there by the order of him the ſaid J. L. a ſilver bowl and ſix ſilver ſpoons, as prizes, by a method depending upon and to be determined by a lot or drawing, by a device of chance, and thereby obtained a conſiderable ſum of money, in the manner following, *i. e.* that he the ſaid J. Lang did, on the ſaid day of laſt, at aforeſaid, in the county aforeſaid, in an open and public manner, on the ſaid ſtage ſo erected

Defendant in conſequence of ſummons appears and pleads not guilty.

Evidence.

Deſcription of the Mountebank's Lottery.

erected and placed as aforeſaid, receive and take of and from ſeveral perſons, to wit, one hundred perſons, then and there aſſembled, one ſhilling each, together with a mark, to wit, ſome a handkerchief, others an apron, and others a glove, all which ſaid marks were taken or placed by the ſaid J. L. or his ſervants, in a heap or parcel together upon the ſaid ſtage, and when no more money or marks were thrown up to the ſaid J. L. upon the ſaid ſtage, he the ſaid J. L. or his ſervants, took out of a heap or parcel of packets and papers containing ſalve and powders, then and there lying on the ſaid ſtage, as many of the ſame packets or papers of ſalve and powders as there were prizes intended to be delivered out, to wit, three prizes, *i. e.* a ſilver bowl, three ſilver ſpoons, and three ſilver ſpoons, then opened the ſame, and put into each of them another paper containing powder, on which was placed, written or appointed certain ſeals, letters or marks denoting it to be a prize, and what ſuch prize conſiſted of, and that whoever had the lot, good fortune, or chance to receive ſuch packet and paper of ſalve and powders would be intitled to ſuch prize, then cloſed up the ſaid packets or papers of ſalve and powder ſo opened for the purpoſe aforeſaid, and put them to the other packets

packets or papers of ſalve and powders in the heap on the ſaid ſtage, which contained no prizes, and mixed them all together, making the number of packets or papers of ſalve and powder equal to the number of marks that were thrown up, and ſhillings that were received, and then called two boys from among the crowd, and employed the ſaid two boys to take up a packet or paper of ſalve and powders out of the heap on the ſaid ſtage, which was delivered to the ſaid J. L. or his ſervants, who then and there took up one of the ſaid marks, proclamation then being made for the owner thereof to claim the ſame, to whom was delivered the mark, together with one of the ſaid packets or papers of ſalve and powder ſo drawn and taken up by the ſaid boys as aforeſaid. And the ſaid J. Lang proceeded in the ſame manner until the ſaid boys had drawn up all the ſaid packets or papers of ſalve and powder, and the ſaid J. L. and his ſervants had delivered out all the ſaid marks, together with the ſaid packets or papers of ſalve and powder, as well thoſe containing the ſeals, letters, or marks denoting them to be prizes as aforeſaid, as others ſo drawn from the heap on the ſaid ſtage by the ſaid boys as aforeſaid, after which the fortunate perſons to whoſe lot the ſaid packets or papers of ſalve and powder fell, which contained the

the papers of powder whereon was placed, written, or printed, the ſaid ſeals, letters, or marks as aforeſaid, attended at or on the ſaid ſtage, and had their reſpective prizes delivered to them by the ſaid J. L. or his ſervant or ſervants. And thereupon the ſaid J. L. not having ſhown any ſufficient cauſe to the contrary thereof, by me the ſaid juſtice, then and there called upon for that purpoſe, the day of aforeſaid, at aforeſaid, in the ſaid county, is convicted by me the ſaid juſtice, of expoſing to ſale plate, *i. e.* a ſilver bowl, and ſix ſilver ſpoons, by a method depending upon and to be determined by a lot or drawing, by a device of chance, againſt the form of the ſtatute, &c. and for his offence aforeſaid hath forfeited the ſum of 200l. to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof I the ſaid juſtice to this preſent record of conviction have ſet my hand and ſeal at aforeſaid, the day of in the year of our Lord 1771.

End of the evidence.

Judgment.

T. M. (L. S.)

Judgment of the quarter ſeſſions on appeal from the above conviction confirming it.

WILTS, to wit, Be it remembered that at the general quarter ſeſſions of the peace of our lord the king, held at M. in and for the ſaid county of W. on the day of in the

11th

11th year of the reign of our ſovereign Lord George the Third, by the grace,&c before Sir E. B. bart. W. S. G. W. A. A. Eſquires, and others their fellows, juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine, &c. It is ordered as follows, i. e.

Upon hearing the appeal of J Lang, of in the county aforeſaid, practitioner in phyſick, from a conviction and judgment (on the information and proſecution of P. Eyles, of in the county aforeſaid, maſon) bearing date the day of laſt, and made by and under the hand and ſeal of J. M. eſq. one of the juſtices of our ſaid preſent ſovereign lord, &c. aſſigned, &c. and alſo, &c. whereby the ſaid J. L. is convicted by him the ſaid juſtice, for expoſing to ſale a ſilver bowl and ſix ſilver ſpoons, by a method depending upon and to be determined by a lot or drawing by a device of chance, againſt the form of the ſtatute, &c. and for his offence aforeſaid hath forfeited the ſum of 200l. to be diſtributed as the ſtatute aforeſaid doth direct. And upon hearing counſel both for the ſaid appellant J. L. and the ſaid proſecutor and informant P. E. this court doth affirm the ſaid conviction and judgment, and this court doth

ſecutor P. E. the ſum of for his treble coſts, agreeably to the directions of the ſtatute aforeſaid.

By the Court.

Affirmed in B.R. Hil. 12 G. 3.

N. B. The conviction was drawn by a gentleman of eminence at the bar, and no objection (it is ſaid) was made to the *form* of it; but the queſtion agitated was whether the facts ſtated, conſtituted an offence within the ſtatute.

Manufactures.

Conviction on 22 G. 2. c. 27. (intituled An Act for preventing frauds and abuſes by perſons employed in the manufactures of hats, &c.) Vid. alſo 17 G. 3. c. 56.

BE it remembered, that on the 28th day of July, in the 23d year of the reign of our ſovereign lord George the Second by the grace of God, &c. in the year of our Lord 1749, before me W. H. eſquire, then and ſtill being one of the juſtices aſſigned to keep the peace of our lord the now king in and for the county of S. and alſo to hear and determine divers felonies and other offences committed within the ſame county, came M. H. of B. in the pariſh of O. in the ſaid county of S. felt-maker, and made information before me the ſaid juſtice, at my houſe, ſituate within the pariſh of S. in the ſaid county of S. that he the ſaid M. H. on the firſt day

Information

of May, in the 22d year of the reign of our ſaid lord the now king, was, and from thenceforth hitherto hath been, a maſter hatter, and that he ſo being a hatter,

hatter, he the ſaid M. H. within the time aforeſaid, and after the 24th day of June, 1749, to wit, on the 3d day of July, 1749, and at divers other days and times between the ſaid 24th day of June and the ſaid 3d day of July, at the pariſh of O. aforeſaid in the ſaid county of S. hired and employed one J. H. of the ſaid pariſh and county, hatter, in the way of his trade, as journeyman hatter, to make certain hats for the ſaid M. H. and then and there delivered to the ſaid J. H. ſeveral parcels of fur, to wit, beaver, coney wool, and goat's hair, for the making of the ſaid hats therewith, and entruſted him therewith for the purpoſe aforeſaid, the ſame being then and there materials fit and proper for that purpoſe, to be uſed, employed, and manufactured in the making of the ſaid hats; and that the ſaid J. H. after that the ſaid ſeveral parcels of fur, to wit, beaver, coney wool, and goats hair, had been ſo deliver- to the ſaid J. H. for the purpoſe aforeſaid, and after that the ſaid J. H. had been ſo intruſted therewith as aforeſaid, and before that the ſame was or were manufactured or made into hats, and after the ſaid 24th day of June, 1749, he, the ſaid J. H. ſo being a journeyman hatter as aforeſaid, and ſo being then hired and employed by the ſaid M. H. as aforeſaid, to make hats for him the ſaid M. H. of the ſaid materials, at the

That J. H. a journeyman hatter, purloined the materials that had been entruſted to him.

doth order the ſaid appellant J. L. on ſight hereof, to pay unto the ſaid pro- the ſaid pariſh of O. in the county afore- ſaid, unlawfully purloined and em- bezzled a great part of the ſaid mate- rials with which he the ſaid H. was ſo intruſted as aforeſaid, for the purpoſe aforeſaid, that is to ſay, three quarters of an ounce weight of the ſaid fur, cal- led Ruſſian beaver, and two ounces weight of the ſaid coney wool, againſt the form of the ſtatute in that caſe made and provided. And that Ann Edwards, reſiding in the pariſh of St. T. in the county aforeſaid (the wife of S. E. of the ſaid laſt mentioned pariſh and county felt-maker) afterwards, to wit, on the ſame 4th day of July, 1749, at the pariſh aforeſaid, in the county aforeſaid, un- lawfully bought, received, accepted, and took by way of ſale, of and from S. H. then and ſtill the wife of the ſaid J. H. the ſaid three quarters of an ounce weight of the ſaid fur called Ruſſian beaver, and two ounces weight of the ſaid coney wool, being part of the ſaid materials with which the ſaid J. H. had been ſo entruſted by the ſaid M. H to be uſed and employed in and about the making of the ſaid hats for the ſaid M. H. and ſo purloined and embezzled by the ſaid J. H. as aforeſaid, ſhe, the ſaid A. E. at the time ſhe bought, received, accepted, and took by way of ſale the ſaid three quarters of an ounce weight of Ruſſian beaver, and two ounces of coney wool

That A. E. bought the ſaid pur- loined ma- terials.

as

as aforeſaid, of and from the ſaid S. H. wife of the ſaid J. H then and there well knowing the ſaid three quarters of an ounce weight of Ruſſian beaver, and two ounces weight of coney wool, to have been ſo purloined and embezzled by the ſaid J. H. as aforeſaid; and the ſaid A. E. at any time before, or at the time ſhe bought, received, accepted, and took by way of ſale the ſaid three quarters of an ounce weight of Ruſſian beaver, and two ounces of coney wool, not having obtained the conſent of the ſaid M. H. for that purpoſe againſt the form of the ſtatute in ſuch caſe made and provided: By reaſon whereof, and by force of the ſtatute in ſuch caſe made and provided, the ſaid A. E. hath forfeited the ſum of 20*l.* And thereupon afterwards, that is to ſay, on the ſaid 28th day of July, 1749, before me the ſaid juſtice, at my ſaid houſe, ſituate in the ſaid pariſh of St. T. aforeſaid, in the county aforeſaid, came as well the ſaid M. H. as the ſaid A. E. the ſaid A. E. having been duly ſummoned to appear before me at the time and place laſt aforeſaid, to ſhew cauſe why ſhe ſhould not be convicted of the ſaid offence charged upon her in and by the ſaid information; and the ſaid M. H. prays, that the ſaid A. E. may be convicted of the ſaid offence. And thereupon the ſaid J. H. and S. H. alſo at the ſame time perſonally preſent before me the ſaid juſtice, and being duly

Defendant's appearance in conſequence of ſummons.

Evidence.

and ſeverally by me the ſaid juſtice ſworn upon the holy goſpel of God to give true evidence of and concerning the premiſes aforeſaid contained in the ſaid information (I the ſaid juſtice having full power and authority to adminiſter the ſaid oath ſeverally to the ſaid J. H. and S. his wife, in this behalf) they the ſaid J. H. and S. his wife being credible witneſſes, and each of them being a credible witneſs in this behalf, and the ſaid J. H. and S. H. being ſo ſeverally ſworn as aforeſaid before me, ſeverally on their ſeveral oaths depoſe and ſwear, and ſay as follows, to wit, he the ſaid J. H. for himſelf depoſeth, ſweareth, and ſaith, that, [*here ſtate the fact of the embezzlement, as in the information, and that he gave it to his wife to ſell for him*] and the ſaid S. H. for herſelf, depoſeth, ſweareth, and ſaith, [*here ſtate the fact of the wife having received the fur from her huſband, and her having ſold it to the defendant, together with all the circumſtances that tend to ſhew that the defendant knew it to be embezzled*]. And the ſaid A. E. being ſo perſonally preſent before me the ſaid juſtice, and having heard the ſaid information, and the matter therein alledged, and the ſaid evidence of the ſaid J. H. and S. his wife, ſo given by them reſpectively before me the ſaid juſtice as aforeſaid, and having fully underſtood the ſame, and being by me aſked, if ſhe has or knows any

any thing to say for herself why she should not be convicted of the said offence charged against her in and by the said information; and all and every the matters and things by her the said A. E. alledged in her defence, of and concerning the premises, being fully heard and understood by me the said justice, Now I the said justice do adjudge and consider, upon the said evidence of the said J. H. and S. his wife, being credible witnesses, and each of them being a credible witness in this behalf, that the said A. E. is guilty of the said offence charged upon her in and by the information aforesaid, and do accordingly convict her of the said offence, and do adjudge that the said A. E. do for her said offence forfeit the sum of 20*l.* according to the form and effect of the said statute; and I do hereby adjudge, that out of the said sum of 20*l.* so forfeited as aforesaid, 3*s.* part thereof, be paid to the said M. H. as and for a satisfaction for the said Russian beaver and coney wool so purloined and taken by way of sale as aforesaid, he the said M. H. being the party injured thereby; and that 7*l.* 14*s.* 10*d.* part of the said 20l. so forfeited as aforesaid, be paid to the said M. H. for the costs of the aforesaid prosecution of the said A. E. in this behalf; and that 12*l.* 2*s.* 2*d.* residue of the said 20l. so forfeited as aforesaid, be equally distributed amongst the poor

Judgment.

Distribution of the penalty.

of the pariſh of St. S. aforeſaid, in the ſaid county of S. the ſaid laſt-mentioned pariſh being the pariſh where the ſaid A. E. at the time of her committing the aforeſaid offence, reſided and inhabited, and ſtill reſides and inhabits, according to the form of the ſtatute in ſuch caſe made and provided. In witneſs whereof I have hereunto ſet my hand and ſeal this 28th day of July, in the 23d year of the reign of our ſovereign lord George the Second, by the grace of God, &c. and in the year of our Lord 1749.

Manufactures. Wages.

Conviction before two juſtices for giving leſs than the regular wages to a journeyman weaver, on 13 G. III. c. 68.

Liberty of the Tower of London. } BE it remembered, that on the 1ſt day of December, in the 16th year of the reign of our Lord the now king, before us D. Wilmot, eſq; and J. Marſhall, eſq; two of the juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in the liberty of the tower of London, and alſo to hear and determine, &c. within the ſame liberty, appeared J. Baker of the hamlet of Mile End New Town, in the county of Middleſex, weaver, and John Timmings, of the precinct of the old Artillery Ground, within the liberty of the tower of London, weaver; and the ſaid J. B. giveth us the ſaid juſtices to underſtand and be informed that after the making of a certain act of parliament made in the 13th year of the reign

Information.

reign of his preſent majeſty, intituled "An act to empower the magiſtrates "therein mentioned to ſettle and regu-"late the wages of perſons employed in "the ſilk manufacture within their re-"ſpective juriſdictions;" and after the 1ſt day of July, 1773, therein-mentioned, and before the 1ſt day of December, in the year of our Lord 1775 aforeſaid, the juſtices of the peace for the liberty of the tower of London, at the general quarter ſeſſions of the peace holden by adjournment on the 6th day of September, in the 13th year of the reign of his preſent majeſty, at the Court-houſe in Wellcloſe-ſquare, in and for the ſame liberty upon application made to them for the purpoſe of ſettling, regulating, ordering, and declaring the wages and prices of the work of journeymen weavers working within their juriſdiction in the ſaid manufacture; and amongſt other things did thereby ſettle, order, and declare the price of the work of journeymen weavers in the ſaid manufacture, for making and manufacturing of *plain yard wide* four-thread alamodes of one thouſand eight hundred counts or leſs, at the ſum of 1*s.* 2*d.* for the ell, and that after ſuch order was made as aforeſaid, the ſame was printed and publiſhed, at the requeſt of the perſons who applied for the ſame, three times, in two daily newſpapers publiſhed in London and Middleſex. And the ſaid John

Baker further giveth us the ſaid juſtices to underſtand and be informed, that after the making and publiſhing the ſaid order, to wit, on the 7th day of November in the year of our Lord 1775, the ſaid J. Timmings was, and from thence hitherto hath been and ſtill is a maſter weaver in the ſilk manufacture, in the precinct of the old Artillery Ground, in the liberty aforeſaid; and that one John Arnold was alſo on the ſame day and year laſt aforeſaid, and continually from thence hitherto hath been and ſtill is a journeyman weaver in the ſilk manufacture, at the precinct aforeſaid, within the liberty aforeſaid, and there employed as the journeyman to the ſaid J. Timmings, to work for him in the ſilk manufacture aforeſaid, and *particularly in working a certain piece of ſilk, called plain yard wide four thread alamode*, containing therein thirty-one ells of wrought ſilk of one thouſand eight hundred counts or leſs, part of the works the prices whereof were ſo ſettled and publiſhed as aforeſaid. And the ſaid John Baker giveth us the ſaid juſtices further to underſtand and be informed, that the ſaid John Arnold being ſo employed by the ſaid John Timmings as aforeſaid, did make the ſaid laſt-mentioned work for him the ſaid J. T. containing therein the ſaid thirty-one ells of wrought ſilk of one thouſand eight hundred counts or leſs as aforeſaid;

aforeſaid; and that upon the 1ſt day of December, in the year laſt aforeſaid, at the precinct aforeſaid, the ſaid J. T. did pay to the ſaid J. A. for ſuch work, the ſum of 9*d.* an ell for ſuch ell thereof, and no more, and that ſuch price ſo paid was leſs by 5*d.* per ell than the price ſo ſettled, allowed, and publiſhed as aforeſaid. And the ſaid J. T. being preſent here before us the ſaid juſtices, in order to make his defence to the aforeſaid complaint and information, and having heard the ſame, he the ſaid J. T. is aſked by us the ſaid juſtices, if he can ſay any thing for himſelf why he the ſaid J. T. ſhould not be convicted of the premiſes above charged upon him in form aforeſaid; who pleadeth, that he is not guilty of the above offence. Nevertheleſs on the ſame day and year aforeſaid, at the precinct aforeſaid, it duly appears to us the ſaid juſtices that the price of the work of journeymen weavers in the ſilk manufacture, within the liberty of the tower of London, was ſettled and regulated by the juſtices of the peace for the ſaid liberty, at the general quarter ſeſſions of the peace holden by adjournment on the 6th day of September, in the 13th year of the reign of his preſent majeſty, at the Court-houſe, in Well-cloſe-ſquare, in and for the ſame liberty, upon application made to them for the purpoſe of ſettling, regulating, ordering, and declaring the

Defendant being preſent is aſked &c.

Plea, not guilty.

Nevertheleſs it appears that the price was ſo ſettled.

wages and prices of the work of journey men weavers working within their juriſdiction; and that the ſaid juſtices, in their ſeſſions aforeſaid, did ſettle, order, and declare the price of the work of ſuch journeymen weavers for making and manufacturing of *plain yard wide four thread alamode* of one thouſand eight hundred counts or leſs, at 1*s.* 2*d.* by the ell, and that the ſaid order was three times publiſhed in two daily newſpapers publiſhed in London and Middleſex, to wit, in a certain paper, called the Public Ledger, on the 16th, 17th, and 18th days of September, in the 13th year of the reign of our lord the now king, and in a certain other paper called the Gazetteer, &c. (as before) the ſaid two papers, called the Public Ledger, and Gazetteer and New Daily Advertiſer, then being daily newſpapers publiſhed in London and Middleſex. And John Arnold, a credible witneſs in this behalf, comes before us the ſaid juſtices now here, and in the preſence and hearing of the ſaid J. T. (he the ſaid J. A. being firſt duly ſworn by us the ſaid juſtices to ſpeak the truth concerning the premiſes aforeſaid) upon oath depoſeth and ſaith, that the ſaid J. T. on the ſaid 7th day of November in the year of our Lord 1775 aforeſaid, was and from thence hitherto and ſtill is a maſter weaver in the ſilk manufacture, at the precinct aforeſaid, within the liberty aforeſaid;

Evidence of the fact.

aforeſaid, and that he the ſaid John Arnold was then and there alſo, and from thence hitherto hath been and ſtill is a journeyman weaver in the ſilk manufacture, and on the 7th day of November, in the year laſt aforeſaid, at the precinct aforeſaid, within the liberty aforeſaid, was employed by and did work for the ſaid J.T. as his journeyman, in the ſilk manufacture, in the making of a certain piece of ſilk, *called plain yard wide four-thread alamode*, containing therein thirty-one counts or leſs, and that ſuch work was part of the works, the price whereof was ſo ſettled by the juſtices at their general quarter-ſeſſions aforeſaid; and that the ſaid J. Timmings afterwards to wit, on the 17th day of November, in the year laſt aforeſaid, at the precinct aforeſaid, and in the liberty aforeſaid, did pay to the ſaid J. A. the ſum of 9d. per ell for each ell thereof, and no more. And hereupon the ſaid J. T. is now by us the ſaid juſtices aſked what he hath to ſay why he ſhould not be convicted by us of and for the ſaid offence; but the ſaid J. T. doth not produce to or before any evidence on his behalf to ſhew and prove that he is not guilty of the offence aforeſaid, nor doth he ſhew or alledge any reaſon why he ſhould not be convicted thereof. Therefore the ſaid J. T. on the ſaid 1ſt day of December, in the year laſt aforeſaid,

Defendant called upon for his defence, but does not produce any evidence.

by and before us the juſtices aforeſaid, according to the form of the ſtatute aforeſaid, is convicted of the aforeſaid offence; and we do adjudge, that for ſuch offence the ſaid J. T. hath forfeited the ſum of 50*l.* of lawful money of G. B. to be diſpoſed of as the ſtatute aforeſaid doth direct.—In witneſs whereof we the ſaid juſtices to this preſent record of the conviction aforeſaid have ſet our hands and ſeals the day and year firſt above written.

Judgment.

Forfeiture.

N. B. This conviction was quaſhed (Eaſt. 16 G. III.) becauſe it did not ſtate that the ſilk *was* yard wide, but only that it was *called* ſo *.

Smuggling. †

Conviction before ſix juſtices of the peace upon the ſtat. 11th G. I. c. 30. ſ. 16. for harbouring run tea.

WILTS, to wit. Be it remembered, that on the 22d day of December, in the 13th year of the reign of our ſovereign lord George the Third, by the grace of God, &c. at Chippenham, in the

Information by collector of excife.

* I do not find there was any other objection. The precedent may therefore be uſeful, taking care to avoid that fault; as to which the Court ſeem to have been more ſtrict than they have been of late years; for it is not, perhaps, eaſy to diſtinguiſh the objection here from that which was overruled in R. v. Hartley (Treatiſe, p. 97.) viz. that the dog was not ſaid to *be* a greyhound, but to be *called* ſo.

† The ſummary juriſdiction of the juſtices in thoſe caſes is by 12 Car. II, c. 23. & 24. The penalties and mode of recovering them are given by 11 G. I. ut ſupra. The information muſt be laid within three months. The manner of ſummons is by 32 G. II. c. 17. Since the late Acts that make

the county of Wilts, John Kiddle, one of his majeſty's collectors of exciſe, in his proper perſon, cometh before us A. B. C. D. &c. (naming them) ſix of the juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and as well for our lord the king as for himſelf, in this behalf, giveth us the ſaid juſtices to underſtand and be informed, that G. B. late of Corſham, in the ſaid county of Wilts, ale-houſe-keeper, within the ſpace of three months now laſt paſt, to wit, on the 14th day of December, in the 13th year of the reign of our ſaid lord the now king, at C. aforeſaid, in the ſaid county of W. did knowingly harbour, keep, and conceal certain run goods, wares and merchandizes, to wit, four hundred and thirty-five pounds weight of run tea, and two hundred and fourteen pounds weight of run raw coffee, of the value of 120l. liable to the duties of exciſe, and contrary to the form of the ſtatute in that caſe made and provided, whereby, and by force of the ſtatute in that caſe made and provided, the ſaid

make it neceſſary to have a licence to deal in tea proſecutions under this ſtatute may be leſs neceſſary; but the precedents under this head may ſtill be uſeful; eſpecially as two out of three of them are caſes where the defendant did not appear, and conſequently the ſummons is ſtated at large.

ſaid G. B. had for his ſaid offence forfeited the ſum of 360l. being treble the value of the ſaid tea and coffee ſo harboured, kept, and concealed as aforeſaid, one moiety thereof to our ſaid lord the king, and the other to the ſaid informant, and prays that the ſaid G. B. may be convicted of the ſaid offence, according to the ſtatute in that caſe made and provided. And afterwards, on the 2d day of January in the 13th year of the reign of our ſaid lord the now king, at C. aforeſaid, the ſaid G. B. having been previouſly ſummoned, in purſuance of our ſummons iſſued for that purpoſe, to appear before us the ſaid juſtices, &c. at this time, to anſwer the matter of complaint contained in the ſaid information, which is now duly proved before us upon the oath of And the ſaid G. B. neglecting to appear here before us in conſequence of our ſaid ſummons, and not making any defence to the ſaid charge contained in the ſaid information, we the ſaid A. B. &c. (naming the juſtices) ſo being juſtices as aforeſaid, do now proceed to examine into the truth of the ſaid complaint contained in the ſaid information. And one a credible witneſs in this behalf, now here appearing before us, ſo being ſuch juſtices as aforeſaid, as a witneſs, to prove the ſaid charge contained in the ſaid information againſt the ſaid G. B. is now here

Defendant ſummoned.

Proof of ſummons being ſerved.

Defendant neglects to appear.

Evidence of the offence.

here by us the ſaid juſtices duly ſworn, and does before us the ſaid juſtices take his corporal oath upon the holy goſpel of God to ſpeak the truth and nothing but the truth, of and upon the matters contained in the ſaid information, we having adminiſtered, and having competent power to adminiſter ſuch oath to him in that behalf. And the ſaid being ſo ſworn, doth on his ſaid oath ſay and depoſe, that the ſaid C. B. within three months now laſt paſt, to wit, on the 14th day of December, in the 13th year of the reign of our lord the now king, at C. aforeſaid in the ſaid county, did knowingly harbour, keep, and conceal certain run goods, wares and merchandizes, to wit, four hundred and thirty-five pounds weight of run tea, and two hundred and fourteen pounds weight of run raw coffee, of the value of 120l. being liable to the duties of exciſe, contrary to the form of the ſaid ſtatute in that caſe made and provided. Wherefore it manifeſtly appears to us the ſaid juſtices, that the ſaid G. B. is guilty of the premiſes charged upon him in the ſaid information. It is therefore conſidered and adjudged by us the ſaid juſtices, that the ſaid G.B. be convicted, and he is accordingly by us convicted of the offence charged upon him in and by the ſaid information. And we do hereby adjudge that the ſaid G. B. for his offence aforeſaid, hath forfeited the ſum of

Judgment.

Forfeiture. of 363l. of lawful money of Great-Britain, one moiety thereof to our ſaid lord the king, and the other moiety thereof to the ſaid J. K. the ſaid informer: But Mitigation. we do mitigate the ſame to the ſum of 120l. and adjudge and order that the ſaid G.B. do forthwith pay the ſaid ſum of 120l. to our ſaid lord the king, and the ſaid J. K. according to the form of the ſtatute in that caſe made and provided.—In witneſs whereof we the ſaid juſtices to this preſent conviction have ſet our hands and ſeals, at C. aforeſaid, in the county aforeſaid, the day of in the 13th year of the reign of our ſaid lord the king, and in the year of our Lord 1773.

(Signed by Mr. Wood.)

Conviction on the 10th Geo. I. c. 10. ſ. 16. for knowingly harbouring and concealing ſmuggled tea.

MIDDLESEX, to wit. Be it remembered, that on the 28th day of November, in the year of our Lord 1777, and in the 18th year of the reign of our ſovereign lord George the Third, at the Rotation Office in Litchfield Street, in the pariſh of St. Anne, in the county of M. Robert Allen, as well for his ſaid majeſty as for himſelf, cometh in his proper perſon before us John Machin and John Croft, eſqrs. two of the juſtices of our ſaid lord the king, aſſigned to keep the peace, &c. in and for the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors,

meanors, in the ſaid county committed, reſiding near the place where the ſeizure hereinafter mentioned was made, and giveth us the ſaid juſtices to underſtand and be informed that William Price, being one of his majeſty's officers of exciſe, and for the inland duties upon tea, payable to his ſaid majeſty by the ſtatutes in that caſe made and provided, on the 10th day of November, in this preſent month of at Ealing, in the ſaid county of M. did ſeize and arreſt to the uſe of his ſaid majeſty, as forfeited, 150lb. weight of tea, together with the packages containing the ſame, and alſo two horſes made uſe of in carrying and removing the ſaid tea from one part of this kingdom to another, for that the ſaid tea being liable and chargeable with the inland duties and other duties to his ſaid majeſty, was, after the 24th day of June, 1724, clandeſtinely run and unlawfully imported from foreign parts to Ealing aforeſaid, in the ſaid county of M. without his ſaid majeſty's duties payable for the ſame having been paid or ſecured as they ought to have been, and without due entry having been made thereof at his ſaid majeſty's Cuſtom-houſe, according to the form of the ſtatute in that caſe made and provided, and without the ſame having been brought into any warehouſe or warehouſes, for that purpoſe provided at the charge of the importer

Information ſtating ſeizure by an exciſe officer.

porter or importers thereof, and approved of by the commiſſioners of his ſaid majeſty's cuſtoms, or the major part of them for the time being, as by the ſtatute in that caſe made and provided is directed, contrary to the form of the ſaid ſtatute; whereby the ſaid tea and the packages containing the ſame, became forfeited. And for that the ſaid two horſes, at the time of the ſaid ſeizure at E. aforeſaid, were made uſe of and uſing in carrying the ſaid tea ſo clandeſtinely run and unlawfully imported as aforeſaid, from one part of this kingdom to another, contrary to the form of the ſaid ſtatute, whereby the ſaid two horſes became forfeited. And the ſaid R. A. further giveth us the ſaid juſtices to underſtand and be informed, that Michael Cox, on the ſaid 10th day of this preſent month of November, at Ealing, aforeſaid, at the time of the ſaid ſeizure, did knowingly harbour, keep and conceal the ſaid tea, ſo clandeſtinely run and unlawfully imported as aforeſaid, contrary to the form of the ſtatute in ſuch caſe made and provided; whereby the ſaid M.C. hath forfeited the ſum of 238*l.* 10*s* of lawful money of G. B. being treble the value of the ſaid tea ſo harboured, kept, and concealed: And thereupon the ſaid R. A. who proſecuteth as aforeſaid, humbly prays the judgment of us the ſaid juſtices in the premiſes, according to the form of the ſtatutes in ſuch caſe

Defendant's concern in the tranſaction.

Forfeiture.

caſe made and provided, and that the ſaid M. C. may be ſummoned to make defence thereto, before us the ſaid juſtices. Whereupon, on the ſaid 28th day of November, in the ſaid year of our Lord 1777, at the ſaid Rotation Office in Litchfield Street aforeſaid, in the ſaid county of M. We the ſaid juſtices do iſſue our ſummons under our hands directed to the ſaid M. C. thereby notifying to him the ſaid information and complaint, requiring the ſaid M. C. to be and appear before us, on the 3d day of December next*, *at of the clock in the forenoon* of the ſame day, at the Office of Rotation in Litchfield Street aforeſaid, in the ſaid county, to make his defence in and to the matters contained in the ſaid information, and thereby informing him that though he ſhould fail therein, we, at the time and place before-mentioned, ſhall proceed to the examination of the matter and matters of fact in the ſaid information mentioned, and thereupon ſhall then and there give judgment and ſentence, as in and by the ſtatutes in ſuch caſe made and provided is directed: And we do authorize and require W. P. or any other officer of exciſe, to ſerve this our ſummons, and to attend us at the time and place before-mentioned, then and there to Summons.

* If the hour was not mentioned in the ſummons, it ſhould ſtand generally to appear in the forenoon or afternoon, as the caſe may be.

to make a return to us of the execution of our ſaid ſummons. At which time and place, that is to ſay at the Rotation Office in Litchfield Street aforeſaid, in the county aforeſaid, on the third day of December aforeſaid, at of the clock in the forenoon of the ſame day, before us the juſtices aforeſaid, comes the ſaid R. A. and the ſaid M. C. although ſolemnly called, neglects to appear before us, and doth not appear before us, nor make any defence againſt the ſaid charge as aforeſaid, although we have waited to the extreme part of the forenoon of the ſame day, for the appearance of the ſaid M.C. And W.N. one of his majeſty's officers of exciſe, a credible witneſs in this behalf, cometh before us the ſaid juſtices, and being duly ſworn upon the holy goſpel of God, before us the ſaid juſtices (we having ſufficient power to adminiſter an oath to him in this behalf) upon his oath ſaith, that he the ſaid W. N. did, on the day of laſt paſt, at duly ſerve the ſaid M. C. with the ſaid ſummons, by then and there delivering a true copy thereof to the ſaid M. C. and ſhewing him the ſaid original ſummons. Therefore, we the ſaid juſtices do proceed to examine into the truth of the ſaid information and complaint. And W. P. a credible witneſs in this behalf on the part of the ſaid informant, cometh before us the ſaid juſtices, and being duly ſworn upon the holy

Defendant does not appear.

Proof of ſervice of the ſummons.

Evidence of the offence.

holy goſpel of God, before us the ſaid juſtices (we the ſaid juſtices having ſufficient power and competent authority to adminiſter the ſaid oath to the ſaid W.P. in that behalf) upon his oath ſaith, that the ſaid W.P. being an officer of his majeſty's exciſe, and for the inland duties payable to his ſaid majeſty upon tea, on the 10th day of November, in the ſaid 18th year of the reign of our ſaid lord the now king, and in the ſaid year of our Lord 1777, upon Ealing Common at Ealing in the ſaid county of M. about the hour of in the night, Seizure. did ſeize and take from the ſaid M. C. *as forfeited*, 159lb. weight of tea, being tea liable to the payment of the inland duties and other duties to his ſaid majeſty, and being the tea mentioned in the ſaid information, together with the package containing the ſame, and alſo two horſes which were then and there made uſe of and uſing by the ſaid M. C. in carrying and removing the ſaid tea to places to the ſaid W. P. unknown, being the horſes mentioned in the ſaid information; and that the ſaid tea was tea for which the duty due and payable to his majeſty for the ſame had not been paid or ſecured, and that no entry had been made thereof at his majeſty's Cuſtom-houſe, nor had the ſame been brought into any warehouſe or warehouſes, for that purpoſe provided at the charge of the importer or importers thereof,

thereof, and approved of by the commiſſioners of his majeſty's cuſtoms, or the major part of them for the time being; and that when the ſaid W. P. ſo ſeized the ſaid tea, the ſaid M. C. was carrying and conveying the ſame away, in a private and clandeſtine manner, to ſome place or places to the ſaid W. P. unknown, and did not nor could give any account how or where he got the ſaid tea, or where he was conveying the ſame to, and although required by this witneſs did not produce any permit or certificate for the removal of the ſaid tea: And the ſaid W. P. further depoſes and ſays, that the ſaid tea was of the value of 79*l.* 3*s.* 4*d.* And thereupon, all and ſingular the premiſes being ſeen and fully conſidered by us the ſaid juſtices, it manifeſtly appears to us the ſaid juſtices, that the ſaid M. C. is guilty of the premiſes charged upon him in and by the ſaid information: It is therefore conſidered by us the ſaid juſtices that he the ſaid M. C. be convicted, and he is by us accordingly convicted of the offence charged upon him by the ſaid information; and we do adjudge that the ſaid 158lb. weight of tea, together with the packages containing the ſame, and alſo the ſaid two horſes, made uſe of in the carrying of the ſaid tea as aforeſaid, were and are forfeited: And we do further adjudge, that the ſaid M. C. hath forfeited for his ſaid offence the

Judgment.

ſum

ſum of 238*l.* 10*s.* being treble the value of the ſaid tea; the ſaid forfeitures and penalties to be diſtributed as the law directs.—In witneſs whereof we the ſaid juſtices to this preſent conviction have ſet our hands and ſeals, at the Rotation Office in Litchfield Street aforeſaid, in the county aforeſaid, the 3d day of December, in the year of our Lord 1777. Forfeiture.

(Signed by Mr. Wood, 1778.)

Eaſter Term, 17 Geo. III.

BERKSHIRE, to wit. Be it remembered, that on the 2d day of November, in the 17th year of the reign of our ſovereign lord George the Third, now king of Great Britain, &c. and in the year of our Lord 1776, at Reading, in the county of Berks. William Pearce, gentleman, in his proper perſon cometh before us Henry Wilder, clerk, and John Reeves, eſq; two of the juſtices of our ſaid lord the king aſſigned to keep the peace, &c. in and for the ſaid county, and alſo to hear and determine divers felonies and other miſdemeanors in the ſaid county committed, reſiding near to the place where the ſeizure hereinafter mentioned was made; and as well for our ſaid lord the king, as for himſelf in this behalf, giveth us the ſaid juſtices to underſtand and be informed, that one John Bromley * was, and yet is

Another conviction for harbouring run tea, on 11th Geo. 1. c. 30. ſ. 16. & 39. before two juſtices. Information.

* Qu. Whether the time ſhould not be mentioned here, either expreſsly or by reference to the time of ſeizure?

is and hath continued to be one of his majeſty's officers of exciſe, and that the ſaid J. B. did on the 8th day of October now laſt paſt, at the pariſh of H. in the ſaid county of B. ſeize as forfeited 756 pounds weight of black and green tea, in a ſtable or place belonging to James Radbourne, of H. aforeſaid, together with the package that contained the ſame, by reaſon of its being unlawfully imported, and his majeſty defrauded of his juſt duties chargeable thereon, whereby the ſaid tea and package are become forfeited; and that the ſaid J. R. did knowingly harbour, keep and conceal, and knowingly permit and ſuffer to be harboured, kept, and concealed on his premiſes, the ſaid tea, ſo unlawfully imported, and his majeſty ſo defrauded of his juſt duties chargeable thereon as aforeſaid, whereby the ſaid J. R. hath forfeited the ſum of 469*l.* 16*s.* of lawful Engliſh money, being treble the value of the ſaid tea: And thereupon the ſaid W. P. who proſecuteth as aforeſaid, humbly prays the judgment of us the ſaid juſtices in the premiſes, according to the ſtatute, &c. and that the ſaid J. R. may be ſummoned to anſwer the premiſes, and make defence thereto, before us the ſaid juſtices. And afterwards, to wit, on the 16th day of November, in the year aforeſaid, at Reading aforeſaid, the ſaid J. R. having been previouſly duly ſummoned, in purſuance of our

Seizure by officer of exciſe.

Appearance of defendant in conſequence of ſummons.

our ſummons iſſued for that purpoſe, to appear before us the ſaid juſtices to anſwer and make defence in and to the matters contained in the ſaid information, he the ſaid J. R. appears before us the ſaid juſtices, to anſwer and make defence in and to the matters contained in the ſaid information; and having heard the ſame, is aſked by us the ſaid juſtices if he can ſay any thing for himſelf why he ſhould not be convicted of the premiſes above charged upon him in form aforeſaid: And thereupon he ſays that he is not guilty of the ſaid offence. Whereupon we the ſaid juſtices do proceed to the examination of the matter, and matters of fact contained in the ſaid information, in the preſence and hearing as well of the ſaid W. P. as of the ſaid J. R. And thereupon, on the ſame day and year laſt-mentioned, at R. aforeſaid, J. B. a credible witneſs in this behalf on the part of the ſaid informer, cometh before us the ſaid juſtices, in his proper perſon, and upon his corporal oath upon the holy evangeliſts of God, now adminiſtered to him by us the ſaid juſtices (we the ſaid juſtices having ſufficient power and competent authority to adminiſter an oath in this behalf) he the ſaid J. B. depoſeth and ſaith in the preſence and hearing of the ſaid J. R. concerning the premiſes in the ſaid information ſpecified, that on the 8th day of October

Plea not guilty.

Evidence.

October laſt paſt, he the ſaid J. B. being a ſupervisor of exciſe, and having received information that a large quantity of ſmuggled tea was then concealed upon the premiſes of the ſaid J. Radbourne, he the ſaid J. B. aſſiſted by E. A. and E. F. officers of exciſe, went to and ſearched the premiſes of the ſaid J. R. at H. aforeſaid, about three or four o'clock in the afternoon of the ſaid day, when they found *in a ſtable and place belonging to and in the occupation of the ſaid J. R. adjoining to the ſaid J. R's barn*, 28 bags of tea, in quantity 756 pounds weight, being the tea mentioned in the ſaid information, which they ſeized and ſecured: That in the judgment of the ſaid J. B. it was impoſſible that ſo large a quantity of tea could be brought to and remain upon the ſaid J. R's premiſes, unknown to him or his family, and that the ſaid tea was then of the value of 156*l.* 12*s.* Whereupon the ſaid J. R. in his defence ſaith, that he knew nothing of the ſaid tea, and that he went to Wokingham with fowls that day, but does not produce any evidence to prove the ſame. And thereupon all and ſingular the premiſes being ſeen and fully underſtood by us the ſaid juſtices, it manifeſtly appears to us the ſaid juſtices, that the ſaid J. R. is guilty of the premiſes above charged upon him by the ſaid information, and we do hereby adjudge that the ſaid J. R. for his offence aforeſaid,

Tea found in defendant's ſtable.

Defence.

Judgment.

aforeſaid, hath forfeited the ſaid 756lb. weight of tea, and the package containing the ſame, together with the ſum of 469*l.* 16*s.* being treble the value of the ſaid tea; which ſaid ſum of 469*l.* 16*s.* we do mitigate to the ſum of 100*l.* which we order to be paid and diſtributed as the law directs.—In witneſs whereof we the ſaid juſtices to this preſent conviction have ſet our hands and ſeals, at R. aforeſaid, in the county aforeſaid, this 16th day of November in the 17th year of the reign of our ſaid lord the king, &c. in the year of our Lord 1776.

This conviction having been removed into the court of K.B. on a rule to ſhew cauſe why it ſhould not be quaſhed, the following objections were taken to it:

1ſt. That the goods are not ſtated in the information to be liable to the payment of any duties:

2dly. That it is not ſtated where the ſtable or place was in which the tea was found:

3dly. It is not ſtated that the tea was *knowingly* concealed by the defendant.

Mr. Wood was to have ſupported the conviction, and deſigned to anſwer the objections in the following manner:

As to the firſt, The judges will take judicial notice that tea is liable to duty;

and if tea of all kinds be liable to the duty ſtated to be chargeable thereon, the tea mentioned in the information muſt of courſe be liable.

To the 2d. The offence is equally an offence wherever committed, and the place is not material, it not being an ingredient in the conſtitution of the offence *.

To the 3d objection (viz. that it is not ſworn the tea was *knowingly* concealed) the words of the ſtatute are "*harbour* "*or keep*", as well as *conceal*. The witneſs ſwears to the ſeizure in a place in uſe and occupation of the defendant, and that, from the largeneſs of the quantity, *he* muſt know it, which ſufficiently warrants the juſtice to infer knowledge.

The above Conviction was confirmed without argument, the objections being (as it ſhould ſeem) given up.

Woods.

Conviction and ſentence of whipping, for cutting and ſpoiling faggot wood Vid. 43 Eliz. c. 7.—15 Car. II. c. 2. ſect. 3.

MIDDLESEX, to wit. Be it remembered, that on this 24th day of September, in the 14th year of the reign of his preſent majeſty George the Third

* Sed query, whether the place ſhould not be mentioned, in order to ſhew it to be within the juriſdiction of the juſtices? Vid. Treatiſe, title **Evidence**, p. 86. R. v. Jeffries on the Lottery Act.

Third, of G. B. &c. at Tottenham High Croſs, in the ſaid county of Middleſex, William Smith of the pariſh of St. Mary Iſlington, in the ſaid county, yeoman, and Ann Aris of the ſame place, ſpinſter, are, by Richard Steer, conſtable of the diviſion of Hornſey, in the pariſh of Hornſey, in the ſaid county, brought before me James Townſend, Eſq; one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king, in and for the ſaid county of Middleſex, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors done and committed in the ſaid county: and the ſaid W. S. and A. A. are now here charged, and each of them is now here charged before me the ſaid juſtice, by Henry Wilmot, of the pariſh of Hornſey aforeſaid, in the ſaid county, with unlawfully cutting and ſpoiling faggot wood, the property of him the ſaid H. W. in the diviſion of Hornſey aforeſaid, in the county aforeſaid, on the 22d day of this preſent month of September, againſt the form of the ſtatute in that caſe made and provided. And thereupon, in the preſence of the ſaid W. S. and A. A. the ſaid H. W. a credible witneſs in this behalf, now here upon his oath on the holy goſpel of God, to him now here by me the ſaid juſtice duly adminiſtered

Information.

Evidence.

(I the ſaid juſtice being duly authorized and empowered to adminiſter an oath to the ſaid H. W.) depoſeth, ſweareth, and upon his oath ſaith, that he the ſaid H. W. on the 23d day of this preſent month of September, in the houſe of the ſaid W. S. in the pariſh of St. Mary Iſlington aforeſaid, in the ſaid county of M. did find one bundle of faggot wood, and ſeveral ſticks of wood, and that the ſaid faggot wood was the property of him the ſaid H. W. And thereupon alſo comes now here before me the ſaid juſtice John Shearman, of the pariſh of Hornſey aforeſaid, in the ſaid county, carter, another credible witneſs in this behalf, and upon his oath on the holy goſpel of God, to him by me the ſaid juſtice duly adminiſtered (I the ſaid juſtice being duly empowered and authorized to adminiſter the ſaid oath to the ſaid J. S. in this behalf) depoſeth, ſweareth, and upon his oath ſaith, in the preſence of the ſaid W. S. and A. A. that he the ſaid J. S. on the 22d day of this preſent month of September, at the pariſh of Hornſey aforeſaid, in the diviſion of H. aforeſaid, about eight o'clock in the evening of that day, ſaw the ſaid W. S. and A. A. together, and that each of them then and there had and were carrying a bundle of faggot wood. And the ſaid W. S. and A. A. having been informed by me the ſaid juſtice

juſtice of the ſaid charge, and having heard the evidence aforeſaid by the ſaid H. W. and J. S. given as aforeſaid, they the ſaid W. S. and A. A. are aſked by me the juſtice aforeſaid, if they or either of them can ſay any thing for himſelf or herſelf, why he or ſhe ſhould not be convicted of the premiſes aforeſaid above charged upon them in form aforeſaid. But they the ſaid W. S. and A. A. do not, nor do either of them now here give a good account, or ſuch account as ſatisfies me the ſaid juſtice how they or either of them came by the ſaid bundles of faggot wood, or that they came by the ſame by and with the conſent of the owner thereof, nor do they the ſaid W. S. and A. A. nor doth either of them produce the party or parties of whom they the ſaid W. S. and A. A. or either of them bought the ſaid wood, or any other credible witneſs to depoſe upon oath ſuch ſale of the ſaid wood, nor do they nor doth either of them requeſt of me the ſaid juſtice any time to be ſet them by me the ſaid juſtice to produce the party or parties of whom the ſaid W. S. and A. A. or either of them bought the ſaid wood, or any other credible witneſs to depoſe upon oath ſuch ſale of the ſaid wood. Whereupon it appears to me the ſaid J. T. the juſtice aforeſaid, that the ſaid W. S. and A. A.

Defendants aſked what they have to ſay.

Do not give a ſatisfactory account how they came by the wood, &c.

are guilty of the ſaid offence of unlawfully cutting and ſpoiling the ſaid wood within the true intent and meaning of the ſtatute in that caſe made and provided, contrary to the form of the ſtatute in that caſe made and provided. Therefore it is conſidered by me the ſaid juſtice, and I do hereby adjudge, that the ſaid W. S. and A. A. are and each of them is guilty of the ſaid offence of cutting and ſpoiling the ſaid wood within the intent and meaning of the ſtatute in that caſe made and provided; and the ſaid W. S. and A. A. are and each of them is now hereby convicted thereof. And inſomuch as the ſaid H. W. now here before me the ſaid juſtice, waives and relinquiſhes all right to any ſatisfaction from the ſaid W. S. and A. A. or either of them, for the ſaid wood, or any part thereof, as owner thereof, I the ſaid juſtice do hereby order and adjudge, that the ſaid W. S. and A. A. do and ſhall, each of them, preſently pay down to the overſeers of the poor of the pariſh of Hornſey aforeſaid, for the uſe of the poor of the ſaid pariſh of Hornſey (within which ſaid pariſh of Hornſey the ſaid offence was committed) the ſum of 10s. But in as much as they the ſaid W. S. and A. A. do not pay the ſaid ſum of 10s. to the ſaid overſeers of the poor of the pariſh of

Judgment.

Owner of the wood waives his ſatisfaction.

Juſtice orders them to pay 10s. to the poor.

Defendants unable to pay it.

of H. aforeſaid, nor doth either of them pay the ſaid ſum of 10s. to the ſaid overſeers of the poor of the pariſh of H. aforeſaid, but alledge and affirm that they are and each of them is wholly unable to pay, and cannot pay the ſame, I do order and adjudge, that they the ſaid W. S. and A. A. and each of them be immediately whipped by the conſtable of the ſaid pariſh of Hornſey, according to the form of the ſtatute in that caſe made and provided. In witneſs whereof I the ſaid juſtice have hereunto ſet my hand and ſeal this 24th day of September, in the ſaid 14th year of his preſent majeſty. Sentence.

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FINIS.